Also, a bill (H.R. 9611) granting a pension to John R. Gamble; to the Committee on Pensions.

By Mr. O'CONNELL: A bill (H.R. 9612) for the relief of Joseph Henry Smith; to the Committee on Naval Affairs.

By Mr. TINKHAM: A bill (H.R. 9613) providing for the advancement in rank of Hugh A. R. Keiran on the retired list of the United States Navy; to the Committee on Naval Affairs.

By Mr. TOBEY: A bill (H.R. 9614) granting a pension to Edwin B. Palmer; to the Committee on Invalid Pensions.

By Mr. BRUNNER (by request): A bill (H.R. 9615) authorizing the Comptroller General of the United States to settle and adjust the claims of subcontractors and materialmen for material and labor furnished in the construction of a post-office building at Hempstead, N.Y.; to the Committee on Public Buildings and Grounds.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

4610. By Mr. CULLEN: Petition of the Booker T. Washington Society of the Brooklyn Evening School, urging the enactment of the Wagner-Costigan antilynching bill; to the Committee on the Judiciary.

4611. By Mr. HANCOCK of New York: Petitions favoring Government loans to business and industry, signed by approximately 4,000 residents of Syracuse and vicinity, submitted by Hon. Rolland B. Marvin, mayor of Syracuse, for the Industrial Recovery League; to the Committee on Banking and Currency.

4612. By Mr. HESS: Resolution adopted by the National Progressive League, whose headquarters are in Cincinnati, Ohio, requesting that Manchukuo be recognized by the United States; to the Committee on Foreign Affairs.

4613. By Mr. O'CONNELL: Petition of the Eighth Ward Women's Democratic Club, Providence, R.I., favoring Senate bill 1978; to the Committee on the Judiciary.

4614. By Mr. RUDD: Petition of the Northeastern Retail Lumbermen's Association, Rochester, N.Y., favoring legislation for the building industry through a plan of Federal financing; to the Committee on Banking and Currency.

4615. Also, petition of the Booker T. Washington Society of the Brooklyn Evening High School, Brooklyn, N.Y., favoring the Wagner-Costigan antilynching bill; to the Committee on the Judiciary.

4616. Also, petition of the Merchants' Association of New York, favoring the passage of House bill 9322; to the Committee on Ways and Means.

4617. By Mr. TARVER: Petition of J. D. Nichols, vice chairman Wayne County (Ga.) Agricultural Board, and others asking for the passage of the Tarver bill (H.R. 9457), to provide for the use of Civilian Conservation Corps Camps, when abandoned, by 4-H club boys and girls, and for other educational and recreational purposes; to the Committee on the Public Lands.

4618. By Mr. THOMAS: Petition of approximately 100 citizens of Glens Falls, N.Y., urging the adoption of the amendment to section 301 of Senate bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4619. By the SPEAKER: Petition of Local Union No. 96, Plasterers and Cement Finishers, Washington, D.C., endorsing the resolution of Representative McFADDEN, of Pennsylvania (H.Res. 343), to investigate all Federal building contracts, regarding violations of the Bacon-Davis Prevailing Wage Act; to the Committee on Rules.

4620. Also, petition of the members of the Children of Mary Sodality, of the Church of the Assumption, of the city of Ansonia, Conn., urging adoption of the amendment to section 301 of Senate bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4621. Also, petition of the Court of St. Rita No. 916, Catholic Daughters of America, urging adoption of the amendment to section 301 of S. 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

SENATE

SATURDAY, MAY 12, 1934

(Legislative day of Thursday, May 10, 1934)

The Senate met at 10 o'clock a.m., on the expiration of the recess.

THE JOURNAL

On motion of Mr. ROBINSON of Arkansas, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Friday, May 11, was dispensed with, and the Journal was approved.

CALL OF THE ROLL

Mr. ROBINSON of Arkansas. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Costigan	Johnson	Pope
Ashurst	Couzens	Kean	Reynolds
Austin	Dickinson	Keyes	Robinson, Ark.
Bachman	Dill	King	Schall
Bailey	Duffy	La Follette	Sheppard
Bankhead	Erickson	Lewis	Shipstead
Barbour	Fess	Logan	Steiwer
Barkley	Fletcher	Lonergan	Stephens
Black	Frazier	McCarran	Thomas, Okla.
Bone	George	McGill	Thomas, Utah
Borah	Gibson	McKellar	Thompson
Bulkley	Glass	McNary	Trammell
Bulow	Goldsborough	Metcalf	Tydings
Byrd	Gore	Murphy	Vandenberg
Byrnes	Hale	Neely	Van Nuys
Capper	Harrison	Norbeck	Wagner
Carey	Hastings	Norris	Walcott
Clark	Hatch	Nye	Walsh
Connally	Hatfield	O'Mahoney	Wheeler
Coolidge	Hayden	Overton	
Copeland	Hebert	Patterson	

Mr. ROBINSON of Arkansas. I desire to announce that the Senator from California [Mr. McADOO] is absent because of illness; that the Senator from Georgia [Mr. RUSSELL] is absent because of a death in his family; and that the Senator from Louisiana [Mr. LONG], the Senator from Illinois [Mr. DIETERICH], the junior Senator from Arkansas [Mrs. CARAWAY], the Senator from South Carolina [Mr. SMITH], the Senator from New Hampshire [Mr. BROWN], and the Senator from Nevada [Mr. PITTMAN] are necessarily detained from the Senate. I ask that this announcement may stand for the day.

Mr. HEBERT. I wish to announce that the senior Senator from Pennsylvania [Mr. REED], the Senator from Indiana [Mr. ROBINSON], the Senator from Maine [Mr. WHITE], the Senator from Delaware [Mr. TOWNSEND], the junior Senator from Pennsylvania [Mr. DAVIS], and the Senator from New Mexico [Mr. CUTTING] are necessarily detained from the Senate.

The VICE PRESIDENT. Eighty-two Senators have answered to their names. A quorum is present.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate a telegram in the nature of a memorial from Dr. John J. Casey, of Wilkes-Barre, Pa., remonstrating against the confirmation of the nomination of James J. Law to be postmaster at Wilkes-Barre, Pa., which was referred to the Committee on Post Offices and Post Roads.

He also laid before the Senate resolutions adopted by the Provincial Board of Abra at Bangued, P. I., protesting against the imposition of an excise tax of 5 cents per pound on coconut oil imported into the United States from the Philippines, which were ordered to lie on the table.

Mr. KING presented a resolution adopted by the city council of Springville, Utah, favoring the enactment of legislation either repealing or amending section 4 of the Interstate Commerce Act so as to place upon the railroads responsibility for determining reasonably compensatory rates for services performed in rail traffic, competitive with traffic moving via the Panama Canal, etc., which was referred to the Committee on Interstate Commerce.

REPORTS OF COMMITTEES

Mr. SHEPPARD, from the Committee on Military Affairs, to which was referred the bill (S. 2896) for the relief of James W. Carmichael, reported it with amendments and submitted a report (No. 989) thereon.

Mr. LOGAN, from the Committee on Military Affairs, to which was referred the bill (S. 63) for the relief of Charles E. Wilson, reported it with an amendment and submitted a report (No. 992) thereon.

Mr. GIBSON, from the Committee on Claims, to which was referred the bill (S. 568) for the relief of Winifred Meagher, reported it with an amendment and submitted a report (No. 991) thereon.

Mr. COPELAND, from the Committee on the District of Columbia, to which was referred the bill (S. 3479) to amend the act entitled "An act to regulate the practice of the healing art to protect the public health in the District of Columbia", approved February 27, 1929, reported it without amendment and submitted a report (No. 990) thereon.

Mr. KING, from the Committee on the District of Columbia, to which was referred the bill (S. 1578) to amend the Code of Laws for the District of Columbia in relation to providing assistance against old-age want, reported it with an amendment and submitted a report (No. 993) thereon.

He also, from the same committee, to which was referred the bill (S. 2685) to provide for the conservation and settlement of estates of absentees and absconders in the District of Columbia, and for other purposes, reported it with amendments and submitted a report (No. 994) thereon.

He also (for Mr. TYDINGS), from the same committee, to which was referred the bill (S. 3483) to exempt from taxation certain property of the American Legion in the District of Columbia, reported it without amendment and submitted a report (No. 995) thereon.

He also (for Mr. REYNOLDS), from the same committee, to which was referred the bill (H.R. 8525) to amend the District of Columbia Alcoholic Beverage Control Act to permit the issuance of retailers' licenses of classes A and B in residential districts, reported it with amendments and submitted a report (No. 996) thereon.

He also (for Mr. MCCARRAN), from the same committee, to which was referred the bill (S. 3471) supplementary to and amendatory of the incorporation of Columbus University, of Washington, D.C., organized under and by virtue of a certificate of incorporation pursuant to the incorporation laws of the District of Columbia as provided in subchapter 1 of chapter 18 of the Code of Laws of the District of Columbia, reported it without amendment and submitted a report (No. 997) thereon.

He also (for Mr. CAPPER), from the same committee, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

S. 741. An act for the relief of Jennie Bruce Gallahan (Rept. No. 1000);

S. 3459. An act to exempt from taxation certain property of the Daughters of Union Veterans of the Civil War in the District of Columbia (Rept. No. 998); and

S. 3261. An act to permit the stepchildren of certain officers and employees of the United States to be admitted to the public schools of the District of Columbia without payment of tuition (Rept. No. 999).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. GLASS:

A bill (S. 3596) to amend section 21 of the Federal Reserve Act, and for other purposes; to the Committee on Banking and Currency.

By Mr. COPELAND:

A bill (S. 3597) authorizing the Comptroller General of the United States to settle and adjust the claims of subcontractors and materialmen for material and labor furnished in the construction of a post-office building at Hempstead, N.Y.; to the Committee on Claims.

By Mr. BONE:

A bill (S. 3598) granting the consent of Congress to the county of Pierce, a legal subdivision of the State of Washington, to construct, maintain, and operate a toll bridge across Puget Sound, State of Washington, at or near a point commonly known as "The Narrows"; to the Committee on Commerce.

By Mr. KING:

A bill (S. 3599) to facilitate the control of soil erosion and/or flood damage originating upon lands within the exterior boundaries of the Uinta and Wasatch National Forests, Utah; to the Committee on Public Lands and Surveys.

A bill (S. 3600) to amend section 22 (g) of the Federal Reserve Act, as amended (relating to loans by member banks to their executive officers); to the Committee on Banking and Currency.

By Mr. O'MAHONEY:

A bill (S. 3601) for the relief of the estate of James H. Sutherland; to the Committee on Claims.

A bill (S. 3602) granting a pension to Pearl Helms; to the Committee on Pensions.

AMENDMENT—INDEMNITY BONDS FOR NATIONAL BANKS

Mr. NEELY submitted an amendment intended to be proposed by him to the bill (S. 2915) requiring national banks to obtain indemnity bonds from State-qualified bonding companies, which was ordered to lie on the table and to be printed.

EMERGENCY CONSTRUCTION OF HIGHWAYS AND RELATED PROJECTS—AMENDMENT

Mr. HAYDEN submitted an amendment intended to be proposed by him to the bill (H.R. 8781) to increase employment by authorizing an appropriation to provide for emergency construction of public highways and related projects, and for other purposes, which was referred to the Committee on Post Offices and Post Roads and ordered to be printed.

POTASH RESOURCES

Mr. HATCH submitted a resolution (S.Res. 239), which was ordered to lie on the table, as follows:

Resolved, That the Secretary of the Interior be, and he is hereby, requested to submit to the Senate, at his early convenience, a report based on information already available or readily procurable covering:

(a) The extent to which the United States now depends upon imports of potash salts, muriate of potash, sulphate of potash, and sulphate of potash magnesia to meet national requirements; and

(b) Whether and the extent to which it is now possible to supply from the natural deposits of the United States all of the aforesaid potash compounds to meet the national requirements, agricultural, chemical, and pharmaceutical; and

(c) What experiments, explorations, investigations, and resources are possible and necessary to make the United States self-supporting in its potash requirements; and

(d) What policies and/or regulations governing the conservation of natural potash deposits on the public domain or elsewhere in the United States are being enforced or are in contemplation for promulgation and enforcement.

CHIPPEWA INDIAN TREATIES

Mr. SHIPSTEAD. Mr. President, day before yesterday the Senate passed a bill which I ask to have reconsidered. It is Senate bill 2980, to modify the effect of certain Chippewa Indian treaties on areas in Minnesota. I have consulted the leaders on both sides of the Chamber, and I find that there is no objection to having the bill reconsidered for the purpose of offering an amendment to it.

I therefore ask unanimous consent that the vote whereby Senate bill 2980 was passed be reconsidered.

The PRESIDING OFFICER (Mr. MCGILL in the chair). Without objection, the vote will be reconsidered.

Mr. SHIPSTEAD. I now send to the desk an amendment to the bill, which I ask to have stated.

Mr. ROBINSON of Arkansas. I suggest to the Senator that he let the bill remain on the calendar for the day.

Mr. SHIPSTEAD. Very well. I ask to have the amendment printed in the RECORD.

The PRESIDING OFFICER. Without objection, that order will be made.

Mr. SHIPSTEAD's amendment is, on page 2, line 1, after the word "treaties" and the colon, to insert the following proviso:

Provided, That in that portion in the said State of Minnesota affected by this act the Indian liquor laws shall continue to apply to the sale, gift, barter, exchange, etc., of liquors to ward Indians of the classes set forth in the act of January 30, 1897 (29 Stat.L. 506), and to the manufacture or sale of liquors on individual Indian allotments or other individual Indian-owned lands while the title to same is held in trust by the United States or while the same shall remain inalienable by the Indian without the consent of some governmental officer.

PIONEER NATIONAL MONUMENT, KENTUCKY

Mr. BARKLEY. Mr. President, there has been organized in Kentucky the Daniel Boone Bicentennial Commission to provide for a proper celebration of the two hundredth anniversary of the birth of Daniel Boone. The commission desires to purchase certain tracts of land in four or five places associated with Boone's activities in Kentucky, and to present them to the Government. There is on the calendar a bill authorizing the President to accept that donation without any expense on the part of the United States. I ask unanimous consent for the present consideration of the bill.

The VICE PRESIDENT. Is there objection to the request of the Senator from Kentucky?

There being no objection, the Senate proceeded to consider the bill (S. 3443) to provide for the creation of the Pioneer National Monument in the State of Kentucky, and for other purposes, which was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Whereas no provision has been made to preserve some of the great shrines of pioneer history that played their part in the drama of the American Revolution, both in resistance to the efforts of the British and their Indian allies to wipe out the American colonists west of the Alleghenies and thus close in on the colonists along the Atlantic seaboard and in waging a counter offensive that resulted in the conquest and acquisition of the Old Northwest; and

Whereas four of these shrines in Kentucky represent in continuity a counterpart of the American Revolution east of the Alleghenies, to wit: (1) Boonesborough, where the first fort "in the West" was erected, the first highway to "the West, the Wilderness Road", terminated, the first colonization was effected, and the first legislature met; (2) Boones Station, whence Daniel Boone, as lieutenant colonel of the Fayette County Militia, rushed troops to the assistance of various other besieged stations as well as joined in the retaliatory campaigns under Gen. George Rogers Clark into the Old Northwest, and where he buried his son and nephew, who fell at the Battle of Blue Licks; (3) Bryans Station, where the women of the fort sallied forth under the rifles of some 600 Indians to procure water for the besieged pioneers on August 18, 1782, contributing in large measure to the successful defense of the fort; and (4) Blue Licks Battlefield, scene of the accredited "Last Battle of the Revolution", August 19, 1782, which aroused all of the western colonists to unitedly launch a devastating campaign into the Ohio country, under the leadership of Gen. George Rogers Clark, that effectually stopped further invasion of Kentucky by the British and Indians and was the forerunner of the final conquest of the entire Northwest Territory for the United States: Therefore

Be it enacted, etc., That the President of the United States be, and he is hereby, authorized and directed to accept donated lands, without cost to the United States, of an area appropriate for the proper commemoration of the valor and sacrifices of the pioneers at the sites of Fort Boonesborough, Boones Station, Bryans Station, and Blue Licks Battlefield in the State of Kentucky, comprising noncontiguous tracts to be united by a memorial highway, all in its entirety to be dedicated to the pioneers of "the West", and established and set apart as the Pioneer National Monument for the preservation of the historical structures and remains thereon and for the benefit and enjoyment of the people.

SEC. 2. That the President of the United States is hereby authorized to designate a commission, that shall serve without salary, to recommend the areas to be preserved for inclusion in the Pioneer National Monument.

SEC. 3. That the said commission shall be authorized to use the franking privilege of the United States mails for the purpose of carrying on correspondence relating to, and in furtherance of, said work.

The preamble was agreed to.

ANTIDUMPING LAWS BY GREAT BRITAIN

Mr. FESS. Mr. President, I have here a dispatch with a London date line in reference to the attitude of Great Britain in her dispute with Japan on trade matters, resulting from the announcement of Mr. Runciman, head of the British Board of Trade, as to the new policy of Great Britain. It is stated in the dispatch:

Japan today found the gates to British colonies barred to two thirds of her former sales of cotton textiles there as a result of Runciman's edict, sounded before a surprised Commons yesterday.

Quick steps will be taken to revise the duties upward in the homeland on silk and other Japanese products, and then the Dominions will be asked to do likewise.

The Government anticipates full Dominion cooperation.

I ask that the dispatch may be inserted in full in the RECORD. I call attention to it because it indicates that Britain is entering upon a policy to end dumping by additional protective legislation rather than by tariff bargaining.

There being no objection, the dispatch was ordered to be printed in the RECORD, as follows:

[From the Washington Star, May 8, 1934]

NEW LAWS TO END DUMPING PLANNED BY GREAT BRITAIN—SENTIMENT GROWS FOR PROTECTION AGAINST LOW-PRICED GOODS

LONDON, May 8.—New antidumping laws, it was indicated today, will be added to Great Britain's ultra protectionist policy—a policy which has led her into declaring an open trade war on Japan.

News of the new development came today fast upon the heels of declarations by Walter Runciman, board of trade head, and Dominions Secretary J. H. Thomas that Britain is prepared to fight with all the means at her command to improve the Empire's trade.

PROTECTIONIST SENTIMENT GROWS

It was revealed that there is a growing sentiment in the House of Commons for laws to protect home manufacturers and producers against the competition of low-priced goods here and in the colonies and dominions.

Japan today found the gates to British colonies barred to two thirds of her former sales of cotton textiles there as a result of Runciman's edict, sounded before a surprised Commons yesterday.

Quick steps will be taken to revise the duties upward in the homeland on silk and other Japanese products, and then the dominions will be asked to do likewise.

FULL COOPERATION EXPECTED

The Government anticipates full dominion cooperation, it was said in high circles today, because of Britain's willingness to extend Empire trade.

Thomas, who entered into the debate following the Runciman announcement of moves to halt Japanese competition, declared every effort will be made to intensify the exchange of products among the Empire's dominions and colonies.

Besides import quotas on cotton and rayon goods from Japan, which colonies and protectorates will be asked to introduce, Runciman disclosed the Government is considering placing quotas against other commodities.

It was revealed that Neville Chamberlain, Chancellor of the Exchequer, already had asked the imports advisory committee for a detailed report on silk duties.

WASHINGTON AIRPORT

Mr. GIBSON. Mr. President, some days ago I introduced a bill to provide for a national airport in the Capital City of the Nation. I now ask unanimous consent to insert in the RECORD a short editorial from the Washington Post, a short editorial from the Washington Star, and two brief articles in relation to the subject.

There being no objection, the editorials and articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post]

APATHY OVER THE AIRPORT

Further delay in the construction of an airport for Washington is forecast by the apathy of both Congress and the District Commissioners. Congress is content to investigate the subject and squabble over proposed sites. The Commissioners have indicated their disapproval of a bill to develop an airport at Gravelly Point because other improvements are considered more urgent.

A considerable sum will be needed in the next few years for construction of schools, hospitals, fire and police stations, penal institutions, the Municipal Center, and the proposed sewage-disposal plant. No one who is familiar with the urgent needs of many District institutions would be inclined to impede these plans. Yet the airport project cannot be treated as if it were merely a desirable improvement for some future period.

Dozens of aviators have testified to the hazards resulting from the continued use of Washington Airport in its present condition. It is a menace to motorists as well as to aviators and their passengers. From this viewpoint, if from no other, the Commissioners ought to give the project further attention. This is not strictly a local undertaking, however. Construction of a permanent air terminal here must be regarded as part of the general plan of developing the Nation's Capital. Obviously the planning of an airport that is of national significance ought not to be delayed merely because local funds are needed for strictly municipal improvements.

It may be assumed that the District will be required to pay part of the cost of the proposed airport. But under the bill in question payment of the District's share would begin 10 years hence. It would be far better to obligate District funds for

essential improvements of this kind than to have them accumulate in surpluses which encourage Congress to reduce its allowance to the Capital City.

[From the Washington Evening Star]

THE GIBSON AIRPORT BILL

A delegation of citizens has won from the Commissioners a promise of "careful consideration" of their recent adverse report on the Gibson bill to develop an airport at Gravelly Point. The Commissioners' original objection to this measure was based on the priority of other pressing local needs, for which no funds are now available, and the additional fact that they cannot predict what the financial condition of the District will be 10 years hence, when the District would begin repaying advances for construction of the airport.

While the Commissioners are perfectly correct in pointing to other municipal needs that must be met, there is also merit in the contention of the citizens' delegation that the Gibson bill establishes a convenient method of financing the development. The Star erroneously indicated in these columns recently that the entire expense of this seminational development would be thrown on the local community. That is not the case, as the bill provides for Federal appropriations at the rate of $750,000 a year until the total estimated cost of $2,500,000 is met, and at the end of 10 years the District would repay half the cost, spreading the repayment over 5 years.

The District is now handicapped by its inability to plan in advance for future improvements, or even to finance the needs which are immediate, because of the unsatisfactory system of fiscal relationship with the National Government. The commitments for future expenditures under the Gibson bill are, however, relatively small, and the division of expense, as proposed, is an equitable one.

[From the Washington Herald, May 11, 1934]

COMMERCE, POSTAL OFFICIALS CONCERNED OVER AIRPORT HAZARD—VIDAL AND BRANCH CITE DANGER IN LOCATION OF MILITARY ROAD; URGE IMMEDIATE RELIEF

Ranking officials of the Commerce and Post Office Departments today expressed grave concern over the crowded and unsafe conditions prevalent at Washington's airline terminal and urged immediate relief from the critical situation by emergency legislation in Congress.

Eugene L. Vidal, Director of Aeronautics, Commerce Department, declared an emergency to exist at Washington Airport, brought on by the imminent advent of two new air lines and the seasonal increase of air traffic at the field.

"The Department has been concerned about conditions there for some time", Vidal said, "and now it appears the situation is to become worse.

"The evils will have to be corrected, or we will be forced to take steps to restrict the use of the field."

ROAD HAZARDOUS

Vidal pointed to the existence of Military Road, running through the middle of the landing area, as the primary obstacle to favorable regard of the airport. Only a congressional act can do away with the highway.

Maj. Rudolph Schroeder, Chief of the Air Line Inspection Service, Commerce Department, supported his superior's views.

In the Post Office Department, Second Assistant Postmaster General Harllee Branch, charged with the administration of the air mail, spoke strongly of the "inadequacy of the Capital's airline terminal."

"We are cognizant of the hazards surrounding the operation of aircraft from the Washington Airport", he said. "There is an obvious danger in the presence of Military Road with its heavy vehicular traffic bisecting the main runway.

MEAD PLEDGES AID

"Steps certainly should be taken immediately toward the elimination of this hazard and the general improvement of the airport. I have landed there, and I know how it is."

Branch said the Post Office Department was also interested in seeing an improvement in airplane and airline office-housing facilities at Washington Airport.

Echoes of the growing sentiment in favor of immediate elimination of the airport hazard were heard from Capitol Hill, where Representative JAMES MEAD (Democrat, New York), Chairman of the House Post Office Committee, announced he would throw his support and the support of his committee to whatever adequate emergency airport legislation might be introduced.

[From the Daily News, Wednesday, May 9, 1934]

AIRPORT IMPROVEMENT VITAL IN VIEW OF TRAFFIC INCREASE—WASHINGTON AIRPORT FACES CRISIS WITH ADDITION OF NEW SERVICES; IMMEDIATE PUBLIC ACTION NECESSARY

By Bob Ball

The affairs of Washington Airport have reached a crisis. Promised the greatest air-traffic flow in history, Washington faces the prospect of throwing up its hands in despair and saying to the Post Office Department and the air lines: Thanks, but we can't handle it. Give it to some other city.

For years this city has skimped along with one of the smallest, dirtiest, and most poorly equipped metropolitan air terminals in the country.

And as the volume of air traffic has increased from year to year, louder have become the pleas for improvement from pilots, passengers, air-line heads, and air-minded citizens.

But never have the city fathers lifted a finger to relieve the situation nor the Federal Government cooperated to the best of its ability.

Nor has there ever been unanimity among the seekers of relief. Bill after bill has been introduced into congressional committees, only to languish and die, while airport proponents fought over technicalities and quibbled over details.

But today the situation is acute.

With 3 transport lines already operating into Washington from 4 points on the compass, 2 new lines soon are to be added by the Post Office Department.

By July 1 lines will be operating direct to New York, Detroit, Chicago, Fort Worth, New Orleans, and Miami. There will be a minimum of 42 daily arrivals and departures upon Washington Airport. And probably more.

There will be as many as 10 arrivals and departures in 1 hour. Safety will be at a premium.

HOUSING PROBLEM

Every inch of available office space in the administration building already is occupied, with one line forced to do business behind a tiny counter out in the waiting room.

And shortly space will have to be found for two new air transport companies and a field post office.

Already the passenger waiting room is hopelessly inadequate for afternoon rush-period crowds. It will be worse next month.

Something has got to be done and done immediately. Quibbling must cease.

SOLUTION

There are several possibilities for immediate solution to the problem—and it must be realized that this is an emergency and must be dealt with accordingly.

Most reasonable would be for the Federal Government, through one of its departments, to lease Washington Airport for a period of 5 years, close Military Road by War Department order, and secure P.W.A. funds for improvement to the landing area and enlargement of the administration building.

This program could be placed into effect immediately and material improvement noted within 2 weeks.

Or, by congressional authorization, the District could carry out the same program. This method would require more time.

DISPUTE

Washington Airport is privately owned. Its owners have made many minor improvements in recent years, but any extensive development has been blocked by a disputed title to the land and the existence of the Federal road bisecting the two landing areas.

Only public action will accomplish the desired result.

Citizens' groups and other associations of the District, in their support of the proposed Gravelly Point airport development, have opposed the temporary improvement of Washington Airport.

But a minimum of 5 years must elapse before an airport possibly could be constructed at Gravelly Point, conceding that such a project is feasible—and the development of commercial aviation in the District would be seriously retarded in the interim.

NEVERMORE!—EDITORIAL FROM THE NEW YORK HERALD TRIBUNE

Mr. HEBERT. Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD an editorial entitled "Nevermore!" appearing in the New York Herald Tribune of Saturday, May 12, 1934.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Herald Tribune of May 12, 1934]

NEVERMORE!

The news permitted to leak out of the White House that something drastic is to be done to N.R.A. will hardly amaze the American public. For weeks it has been plain that this vast plan to regiment all industry was in serious trouble. Most of its 425 codes were simply not functioning. Public opposition was mounting steadily in every section of the country.

The statement that a major operation is now to be performed and that the codes for all service trades are to be jettisoned comes late, not soon. Such a decision would, in fact, do hardly more than ratify a rejection already resolved upon and largely effected by the general public. The jailing of tailor Maged in Jersey City for a nickel undercharge was a small episode in itself. But it brought home to the Nation as nothing else could the truth about N.R.A.—in particular, its viciously un-American interference with the freedom of the individual.

It remains to be seen just what a "service trade" is and just how far the administration is prepared to admit the appalling blunders that have been committed in the name of the blue eagle. It was in July, 10 months ago, that this ill-fated bird was hatched. No such emblem was needed for the first limited and sensible steps taken under the Recovery Act. The project as then announced did not go beyond the voluntary organization of sick industries like textiles, oil, and coal. The vicious blunder came with the announcement of the blanket code and the mad effort that followed to codify all industry.

It is not pleasant to look back through these 10 months and reflect upon the waste effort, the huge expense to which American industry has been put by this mistake. No one can pretend to estimate the extent to which recovery has been retarded by these futile motions, these foolish restraints. But the cost has unmistakably been great.

Nor is it easy to forgive the spirit of arrogance with which this herding of the American people was undertaken. When the newspapers of the country felt obliged to assert their constitutional right of free speech they were opposed and insulted. Any industry which attempted to assert its views was liable to be threatened and bullied. The radio, controlled by the administration through its licensing power, was made the spokesman of the new deal and largely restricted to Government propaganda. Let us hope that the administration has learned its lesson and that such a mad, futile effort will never be made again.

The truth is unmistakable now that N.R.A., as thus expanded, did not, and could not work in a free America. For the enforcement of such price fixing and such wage and hour regulations a bureaucratic army of spies would have been necessary compared to which the army of prohibition agents would be as a squad. It would have been necessary to multiply the courts and the jails indefinitely and to find a Siberia to which to send the conscientious offenders. And, after such a process of enforcement, America, as it was founded and preserved through a century and a half, would have been dead.

Fortunately for the historic American eagle there is still a good deal of life left in the old bird. The dark bird which was scheduled to supplant him and which first flapped its wings last summer always had an alien look. It seemed more Russian than American, and so it has proved to be. His doom was certain. May the system of voluntary codes be preserved in those industries for which they are suited and which want them! May the effort to tell every American what he may charge and how long he can work and what he shall be paid be sent back to the land from which it came!

THE DARROW REPORT—EDITORIAL FROM THE WASHINGTON POST

Mr. HEBERT. Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD an editorial entitled "The Darrow Report", appearing in the Washington Post of Saturday, May 12, 1934.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, of May 12, 1934]

THE DARROW REPORT

It is fairly safe to assume that the Darrow report, if it had been published promptly, in its original form, would never have aroused the excitement created by its failure to appear. Unconfirmed rumors that the findings are to be suppressed or toned down have aroused senatorial critics of the N.R.A. and have elicited outcries against censorship. As a matter of fact, the contents of the report, whatever they may be, seem much less important than the method of handling it.

Mr. Darrow's ultraradical views are so well known that few people would be shocked by any hostile opinions that he may have endorsed in the much-discussed document. Unless he was made chairman of the national review board on the theory that the best way to disarm a hostile critic is to take him into the fold, the President must have been prepared for a report that would not follow conventional lines.

The aversion of the present administration to outside criticism, even when offered in a friendly spirit, is well known. It is especially conspicuous in view of the experimental character of the emergency legislation and the professed desire of Government officials to profit by constructive suggestions. In this case, inside criticism has been invited, and there is no excuse for a refusal to deal with it openly and let the public judge whether it is justified. It is a sign of weakness and poor political strategy to suppress criticism, regardless of whether it may be justifiable.

Unless the mystery that surrounds the Darrow report is cleared up speedily, therefore, the public will conclude that there is a good deal to hide, and the report may have an influence out of all proportion to its real significance.

THE SILVER ISSUE—ARTICLE BY ROBERT H. HEMPHILL

Mr. WHEELER. Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD an article appearing in the Washington Herald of this day entitled "The Silver Issue", by Robert H. Hemphill.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Herald of Saturday, May 12, 1934]

THE SILVER ISSUE

By Robert H. Hemphill, Financial Authority

A report from the United States Monetary Commission in 1877 says in part:

"As the volume of money shrinks the prices fall.

"When money is decreasing in volume prices have no bottom except a receding one, and they are inexorably ruled by the volume of money.

"In the whole history of the world every great and general fall in prices has been preceded by a decrease in the volume of money."

"At the Christian era the metallic money of the Roman Empire amounted to $1,800,000,000. At the end of the fifteenth century it had shrunk to $200,000,000.

"During this period a most extraordinary and baleful change took place in the history of the world. The people were reduced by poverty to the most degraded condition of serfdom and misery. The disintegration of society was almost complete.

"The conditions of life were so hard that individual selfishness was the only instinct consistent with self-preservation.

"All public spirit, all generous emotions, all noble aspirations of men shriveled and disappeared as the volume of money shrunk and prices fell.

"Without money civilization could not have had a beginning; with a diminishing supply it must languish, and unless relieved, finally perish."

Since 1929 we have had here in the United States, to a limited extent, a repetition of the historic dark ages which all real students of financial history ascribe to the progressive contraction of the money in circulation and the consequent parallel cessation of the creation and exchange of wealth, with its increasing poverty.

The patriots in Congress who are struggling to increase the supply of money in circulation, who refuse to accept dictation of the administration, are struggling to prevent in these United States a repetition of the pathetic picture described by the Monetary Commission.

It is high time the thoughtful and courageous agriculturists, merchants, and industrialists of this country come awake and inquire into just what is going on behind the scenes in Washington.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the House had passed a bill (H.R. 8781) to increase employment by authorizing an appropriation to provide for emergency construction of public highways and related projects, and for other purposes, in which it requested the concurrence of the Senate.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

HOUSE BILL REFERRED

The bill (H.R. 8781) to increase employment by authorizing an appropriation to provide for emergency construction of public highways and related projects, and for other purposes, was read twice by its title and referred to the Committee on Post Offices and Post Roads.

REGULATION OF SECURITIES EXCHANGES

The Senate resumed the consideration of the bill (S. 3420) to provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.

Mr. FLETCHER obtained the floor.

Mr. KEAN. Mr. President, will the Senator yield to enable me to offer an amendment?

Mr. FLETCHER. I yield to the Senator from New Jersey for that purpose.

Mr. KEAN. I offer the amendment which I send to the desk and ask that it may be read.

The VICE PRESIDENT. Does the Senator desire the amendment read, or does he merely desire it printed in the RECORD?

Mr. FLETCHER. Mr. President, the amendment has been printed. I do not believe the Senator cares to have it read.

Mr. KEAN. I will make a statement about it. I have here a comparison of the United States Securities Act with the British Companies Act. The comparison is only about 20 pages long. Shall I go over it?

Mr. FLETCHER. The Senator may do whatever he wishes. I do not care. I am ready to vote on the amendment. Let the Senator present his amendment and we will vote on it.

Mr. KEAN. Perhaps I had better withdraw my amendment and offer it as a substitute for the amendment of the Senator from Florida. Would that be more satisfactory?

Mr. FLETCHER. I will leave that entirely to the Senator from New Jersey. It would not be properly a substitute for my amendment, but I leave that to the Senator.

Mr. KEAN. I do not want unnecessarily to take up any time, but I do want to get the amendment properly before the Senate. I think it is a very important amendment to the people of the United States, and I am very anxious to have it considered.

Mr. FLETCHER. We will pursue the course suggested. I will offer my amendment and the Senator may then offer his amendment as a substitute for mine.

Mr. KEAN. That will be satisfactory.

The VICE PRESIDENT. The Chair has recognized the Senator from Florida who yielded to the Senator from New Jersey to offer an amendment. The Senator from New Jersey offered the amendment. Does he now withdraw it?

Mr. KEAN. I withdraw my amendment at the request of the Senator from Florida.

The VICE PRESIDENT. The Senator from New Jersey withdraws his amendment. The Senator from Florida has the floor.

Mr. FLETCHER. Mr. President, I offer the amendment which I send to the desk. The amendment was printed nearly 2 weeks ago and has been on the desks of Senators fully that long. The amendment which I am now offering is the same as printed except that I have made one slight change. Perhaps the clerk had better read the entire amendment.

Mr. HASTINGS. Mr. President, before the clerk reads the amendment may I invite the Senator's attention to the fact that, as I recollect, we are by unanimous consent proceeding under a 15-minute limitation upon debate upon the bill and upon any amendment. I am quite certain those of us who consented to that arrangement had no idea at the time that this important amendment was to be offered. I think the general impression was, and I certainly am not blaming anybody for it, that the two amendments to the Securities Act would not be offered. That impression persisted in my mind until late yesterday when I did what I perhaps ought to have done in the first place. I went to the chairman of the committee who had prepared the amendment and asked him about it.

It was late yesterday when we learned definitely that the particular amendments were to be offered to the Securities Act. I have for 2 or 3 hours this morning been trying to find out what one of the amendments is intended to accomplish. I say to the Senate that it will be impossible for any Senator, within a period of 15 minutes or 30 minutes, or even an hour, in my judgment, to explain the amendment to the Senate. We have not had the advantage of any report from the committee. We have not had a word of explanation except that which we are now to hear from the Senator from Florida. I think the Senate ought to consent that the agreement into which we entered some time day before yesterday limiting debate should be set aside. This is a very important amendment and it will take a good deal of time to consider it.

Mr. ROBINSON of Arkansas. Mr. President, may I inform the Senator from Delaware that I should object to any such arrangement? We have been a whole week considering the bill. The amendments of the Senator from Florida, to which the Senator from Delaware refers, have been pending since the 26th of April, more than 2 weeks.

Mr. FLETCHER. Mr. President, how anyone can say he did not suppose I was going to offer the amendments is beyond my comprehension. I have insisted on offering them. I offered them early in the consideration of the bill, but the Senator from Oregon [Mr. McNARY] suggested that we ought to amend the bill itself before we took up title II to amend the Securities Act. I yielded to that suggestion because I thought he was right about it. Therefore, I have given way to all amendments that were offered to the bill itself. I have been patiently waiting until we reached these two amendments, but I never have indicated or even thought that the amendments were not to be presented. I have been insisting upon presenting them all the while. They have been here for 2 weeks, and Senators have certainly had an opportunity to study them. It is absurd to come here at the last minute and say there has not been time to consider them.

Mr. HASTINGS. Mr. President, I ask unanimous consent that the agreement with respect to 15-minute limitation on debate shall not apply to the chairman of the committee who has offered the amendment.

Mr. ROBINSON of Arkansas. I object.

The VICE PRESIDENT. Objection is heard. Does the Senator from Florida desire the amendment read?

Mr. FLETCHER. I think the amendment had better be read.

Mr. JOHNSON. Mr. President, may I call attention simply to a matter of title? The amendment is entitled "Title II." There is a title II now in existence in the Securities Act. It is a title which has never been put in operation, but nevertheless exists.

Mr. FLETCHER. The amendment has reference to title II of the bill now before the Senate, and not title II of the Securities Act.

Mr. JOHNSON. I beg the Senator's pardon. I thought the amendment had reference to title II of the Securities Act.

Mr. FLETCHER. No. I ask that my amendment may be read.

The VICE PRESIDENT. The amendment will be read.

The CHIEF CLERK. On page 57, after line 9, it is proposed to insert the following:

TITLE II—AMENDMENTS TO SECURITIES ACT OF 1933

SECTION 201. (a) That paragraph (1) of section 2 of the Securities Act of 1933 is amended to read as follows:

"The term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing."

(b) Paragraph (4) of such section 2 is amended to read as follows:

"(4) The term 'issuer' means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term 'issuer' means the person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term 'issuer' means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term 'issuer' means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering."

(c) Paragraph (10) of such section 2 is amended to read as follows:

"(10) The term 'prospectus' means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio, which offers any security for sale; except that (a) a communication shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of section 10 was sent or given to the person to whom the communication was made, by the person making such communication or his principal, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, and state by whom orders will be executed."

SEC. 202. (a) Paragraph (2) of section 3 (a) of such act is amended to read as follows:

"(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the

United States pursuant to authority granted by the Congress of the United States, or any certificate of deposit for any of the foregoing, or any security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank";

(b) Paragraph (4) of such section 3 (a) is amended by striking out "corporation" and inserting in lieu thereof "person."

(c) Such section 3 (a) is further amended by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon, and by inserting immediately after such paragraph (8) the following new paragraphs:

"(9) Any security issued by a person where the issue of which it is a part is exchanged by it with its own security holders exclusively and where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

"(10) Any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the conditions of such issuance are subject to the supervision of any court, or of any official or agency of the United States authorized to exercise such supervision, or of any State banking or insurance commission or similar authority;

"(11) Any security which is a part of an issue sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory."

SEC. 203. (a) Paragraph (1) of section 4 of such act is amended (1) by striking out "not with or through an underwriter and"; and (2) by striking out "last" and inserting in lieu thereof "first."

(b) Paragraph (3) of such section 4 is hereby repealed.

SEC. 204. Subsection (c) of section 5 of such act is hereby repealed.

SEC. 205. Paragraph (1) of section 10 (b) of such act is amended to read as follows:

"(1) When a prospectus is used more than 13 months after the effective date of the registration statement, the information in the statements contained therein shall be as of a date not more than 12 months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense."

SEC. 206. (a) Section 11 (a) of such act is amended by adding, after the last line thereof, the following new sentence: "If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least 12 months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person."

(b) Clauses (C) and (D) of paragraph (3) of section 11 (b) of such act are amended to read as follows: "(C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), such part was made by an expert selected after reasonable investigation and with reasonable ground for belief in his ability for such purpose, and he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document."

(c) Subsection (c) of such section 11 is amended to read as follows:

"(c) In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property."

(d) Subsection (e) of such section 11 is amended to read as follows:

"(e) The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided*, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have received for acting as an underwriter some benefit, directly or indirectly, greater than underwriters similarly situated with reference to the issuer, or other underwriters) be liable in any suit or as a consequence of suits authorized under subsection (a) for damages in excess of the total price at which the securities underwritten by him were offered to the public. In any suit under this or any other section of this title the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard."

SEC. 207. Section 13 of such act is amended (a) by striking out "2 years" wherever it appears therein and inserting in lieu thereof "1 year"; (b) by striking out "10 years" and inserting in lieu thereof "5 years"; and (c) by inserting immediately before the period at the end thereof a comma and the following: "or under section 12 (2) more than 5 years after the sale."

SEC. 208. Section 15 of such act is amended by inserting immediately before the period at the end thereof a comma and the following: "unless the act for which such controlled person is alleged to be liable under section 11 or 12 was not performed at the direction of the controlling person nor to enable such controlling person to evade liability under said sections."

SEC. 209. (a) The first sentence of subsection (a) of section 19 of such act is amended by striking out the word "accounting" and inserting in lieu thereof the following: "terms deemed by the Commission to be accounting, technical."

(b) Subsection (a) of such section 19 is further amended by adding at the end thereof the following new sentence: "Acts done or omitted in good faith in compliance with the rules and regulations of the Commission authorized by this title shall be deemed, for the purpose of determining any and all liability under this title, to be in compliance with its provisions, notwithstanding the fact that such rules and regulations may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to have been made by the Commission in excess of, or contrary to, the authority conferred upon it by the provisions of this title."

SEC. 210. Upon the expiration of 90 days after the date upon which a majority of the members of the Federal Securities Exchange Commission appointed under section 4 of title I of this act have qualified and taken office, all powers, duties, and functions of the Federal Trade Commission under the Securities Act of 1933 shall be transferred to such Commission, together with all property, books, records, and unexpended balances of appropriations used by or available to the Federal Trade Commission for carrying out its functions under the Securities Act of 1933.

On page 1, after line 2, insert:

"TITLE I—REGULATION OF SECURITIES EXCHANGES"

In sections 2 to 30, both inclusive, of the bill, except in section 7 (d), strike out the word "act" wherever it appears and insert in lieu thereof the word "title."

Mr. FLETCHER. Mr. President, it will be observed after listening to the reading of this amendment that its purpose is to clarify certain provisions of the present Securities Act to relieve it of some ambiguities and to liberalize it. The effort has been to meet objections and criticisms and complaints which have come to the committee that the present act is too drastic, and is interfering with business. We have tried to meet those objections by this amendment; and, so far as I know, no objection has been raised to the amendment.

I have conferred with a number of Senators, and, so far as I know, the amendment has met with their universal approval. I have heard no objection to it. At any rate, Mr. President, I have not only had the amendment printed, but it has been on the desks of Senators, and I have talked with them about it. There never has been any other purpose than to present the amendment at the proper time.

Last Monday I had inserted in the RECORD a memorandum explanatory of the amendment, and it has been in the CONGRESSIONAL RECORD ever since then. I now ask that the clerk read—because he has a better voice than I have—the memorandum which I send to the desk, which will explain the provisions of the amendment.

The PRESIDING OFFICER (Mr. BACHMAN in the chair). Without objection, the memorandum will be read.

The legislative clerk read as follows:

MEMORANDUM EXPLANATORY OF SUGGESTED AMENDMENTS TO THE SECURITIES ACT

Amendment to section 2 (1): The purpose of this amendment is to make it clear that certificates of deposit, fractional oil royalties, and similar interests are included within the definition of a security and thus subject to the Securities Act. Some doubt exists whether they are so included under the present language of the act.

Amendment to section 2 (4): The purposes of this amendment are (1) to eliminate a guarantor from the definition of an issuer and (2) to define the issuer of fractional undivided interests in oil, gas, or other mineral rights. The words "or persons" have also been deleted from the definition of an issuer of certificates of deposit, etc. The singular will include the plural where necessary, and the express use of the plural word has caused some doubts about the commission's interpretation that a committee, trust, or other entity, and not the individual member, is the issuer intended by the definition. Putting the status of an issuer of the guaranteed security upon the guarantor raises serious practical difficulties in connection with the filing of registration statements. The act will adequately cover guarantors and the furnishing of information concerning them without this clause. The amendment respecting fractional undivided interests in oil, gas, or other mineral rights is necessary in connection with the amendment to section 2 (1).

Amendment to section 2 (10): The purposes of this amendment are (1) to make clear beyond any doubt the interpretation of the commission that literature accompanying a prospectus as well as literature sent subsequent to the sending of a prospectus shall not be required to conform to the prospectus requirements of section 10 of the act, and (2) to remove from a person required to furnish a prospectus the absolute duty to see that the prospectus is received by the person to whom it is sent. It seems sufficient to require proof of the actual sending of a prospectus without making the sender take all risks of nondelivery.

Amendment to section 3 (a) (2): The purposes of this amendment are: (1) to put the District of Columbia upon a parity with the States with reference to the exemption of bank stocks issued by banks organized under the laws of the District of Columbia; (2) to exempt municipal bondholders' protective committes; and (3) to extend the scope of the public instrumentality exemption to expanding activities in which governments are indulging. The exemption of municipal bondholders' protective committees is dictated purely by considerations of expediency. These committees have generally had a good record in the past. There is far from the urge present in these cases as contrasted with industrial and real-estate reorganizations for committee members to take responsibility for the sake of profit, so that as a practical matter there is hesitation on the part of committee members to assume even a slight responsibility. The extension of the public instrumentality exemption is dictated by conservative decisions of courts which have refused to regard as "essential governmental functions" such activities as the furnishing of light, transportation, power, and even water.

Amendment to section 3 (a) (4): The purpose of this amendment is to correct an obvious error in the original act which limited this exemption simply to corporate organizations when its extension to unincorporated associations is equally defensible in practice and in theory.

Amendment adding sections 3 (a) (9), (10), and (11): This amendment has several purposes. The primary purpose of the amendment is to make clear that the exemptions accorded by the present sections 4 (3) and 5 (c) of the act extend beyond the particular transactions therein covered, to the security itself. Considerable confusion has existed on this point, and the amendment is merely a confirmation of interpretations of the sections by the Commission. The new section 3 (a) (9) incorporates the first clause of the existing section 4 (3), and makes clear, in accordance with the interpretation of the Commission, that in order that the exemption may be available the entire issue must be exchanged exclusively with existing security holders. This paragraph also effects a change which makes clear that the type of commission or other remuneration the payment of which will remove the exemption is that paid for soliciting an exchange. This conforms to the interpretation of the Commission. The new section 3 (a) (10) incorporates the second clause of the existing section 4 (3) and substantially extends the present provisions in order to cover various forms of readjustments of the rights of holders of outstanding securities, claims, and property interests where the holders will be protected by court supervision of the conditions of the issuance of their new securities. Also, such readjustments under the supervision of officials and agencies of the United States and under the supervision of State banking, insurance, and similar officials are brought within the exemption. Thus, the amended section will afford an exemption to securities issued in connection with a readjustment of outstanding real estate bond issues, and the exemption will also cover securities issued under the supervision of the Comptroller of the Currency, the Federal Reserve Board, and similar Federal officials, as well as State banking and insurance officials. By the requirement that securities, claims, and property interests must be bona fide outstanding, the new section will provide protection against resort to the exemption for the purpose of evading the registration requirements of the act. The new section 3 (a) (11) incorporates the existing section 5 (c) of the act and further makes clear that the exemption is not limited to the use of the mails. Thus, a person who comes within the purpose of the exemption but happens to use a newspaper for the circulation of his advertising literature, which newspaper is transmitted in interstate commerce, does not thereby lose the benefits of the exemption.

Amendment to section 4 (1): The purposes of this amendment are (1) to remove the phrase "not with or through an underwriter" in the second clause of the section; and (2) to correct an error in the third clause of the section, making it clear that the original date of the public offering is the date from which the year is to be calculated during which a dealer is bound to supply his customers with a prospectus. The Commission has recognized by its interpretations that a "public offering" is necessary for "distribution." Therefore, there can be no underwriter within the meaning of the act in the absence of a public offering and the phrase eliminated in the second clause is really superfluous.

Repeal of sections 4 (3) and 5 (c): These are in accordance with the amendment provided by the new sections 3 (a) (9) (10) and (11).

Amendment to section 10 (b) (1): The purpose of this amendment is to place only a reasonable instead of an absolute duty upon the user of a prospectus 13 months after its issuance of keeping the information therein up to date. It was originally conceived that users of prospectuses could protect themselves herein by contract with the issuer, but it appears only too likely that users of the prospectus will not have the forethought, and therefore will be left in a situation where they cannot of their own accord conform with the requirements of the act.

Amendment to section 11 (b) (3): This amendment restates the existing section. It seems that the section as written, though meaning the same thing, has had an unfortunate psychological effect.

Amendment to section 11 (c): This amendment has the same purpose as the preceding amendment. The term "fiduciary relationship" has been terrifyingly portrayed. The amendment substitutes for that language the accepted common-law definition of the duty of a fiduciary.

Amendment to section 11 (e): This amendment is the most important of all. It has three purposes: (1) it permits the defendant in an action under section 11 to reduce the damages so that he will not be liable for damages which he proves had no relation to his misconduct; (2) it provides that an underwriter who does not receive any preferential treatment is permitted to limit his total liability for all suites brought under section 11 to the extent of the public offering price of the securities which he underwrote; and (3) it provides, as a defense against blackmail suits as well as a defense against purely contentious litigation on the part of the defendant, that a court can require a bond for costs and can assess costs against either the plaintiff or the defendant, where the court is convinced either that the plaintiff's suit had no merit or that the defendant's defense had no merit. The suggested amendment seems equitable.

Amendment to section 13: The purpose of this amendment is to reduce the periods of limitations on actions to one half of those at present provided by the section; and also to correct an apparently inadvertent omission by making the 5- (formerly 10-) year period of limitation on actions expressly applicable to section 12 (2).

Amendment to section 15: The purpose of this amendment is to restrict the scope of the section so as more accurately to carry out its real purpose. The mere existence of control is not made a basis for liability unless that control is effectively exercised to bring about the action upon which liability is based.

Amendment to section 19 (a): The purpose of this amendment is to permit the regulations of the Commission, under the powers conferred upon it, adequately to protect persons who rely upon them in good faith. The powers of the Commission are also extended to include the defining of technical as well as trade terms.

Mr. FLETCHER. Mr. President, I offer the amendment, and I hope the Senate will agree to it.

Mr. KEAN. Mr. President, I now offer my amendment as a substitute for the amendment of the Senator from Florida, and should like to have it read.

The PRESIDING OFFICER. The clerk will read.

The reading clerk proceeded to read the amendment.

Mr. BARKLEY. Mr. President, has this amendment been printed in the RECORD?

Mr. KEAN. No; it has not been printed in the RECORD.

Mr. BARKLEY. It has been printed for the benefit of Senators for some days?

Mr. KEAN. Yes.

Mr. BARKLEY. Is the Senator willing to have the further reading of the amendment dispensed with and let it be printed in the RECORD?

Mr. KEAN. If the Senator wishes to make a motion to that effect, I shall agree to it.

Mr. BARKLEY. I ask unanimous consent that the further reading of the amendment be dispensed with and that it be printed in the RECORD.

The PRESIDING OFFICER. Without objection, the further reading of the amendment will be dispensed with, and the amendment will be printed in the RECORD.

Mr. KEAN's amendment entire is as follows:

TITLE II

PART I

PROSPECTUS

SECTION 1. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the commission for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The commission shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding $25 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

SEC. 2. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in part I of the schedule of this act and set out the reports specified in part II of the schedule, and the said parts I and II shall have effect subject to the provisions contained in part III of the schedule.

(2) A condition requiring or binding an applicant for shares in bonds or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in bonds or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section: *Provided*, That this subsection shall not apply if it is shown that the form of application was issued either (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares, bonds, or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding $2,500.

(4) In the event of noncompliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the noncompliance or contravention, if (a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or (b) he proves that the noncompliance or contravention arose from an honest mistake of fact on his part; or (c) the noncompliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused: *Provided*, That in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of part I of the schedule to this act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to the issue to existing members, bond holders, or debenture holders of a company of a prospectus or form of application relating to shares in bonds or debentures of the company, whether an applicant for shares, bonds, or debentures will or will not have the right to renounce in favor of other persons, but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this act apart from this section.

SEC. 3. (1) A company limited by shares or a company limited by guaranty and having a share capital shall not, previous to the statutory meeting, vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

SEC. 4. (1) Where a prospectus invites persons to subscribe for shares in bonds or debentures of a company—

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares, bonds, or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(iii) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(iv) that—

(a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and

(b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and

(c) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided, That a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report, or valuation as is mentioned in paragraph (iv) (b) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

SEC. 5. (1) Where a company allots or agrees to allot any shares in bonds or debentures of the company with a view to all or any of those shares, bonds, or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares, bonds, or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares, bonds, or debentures were subscriber for those shares, bonds, or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares, bonds, or debentures was made with a view to the shares, bonds, or debentures being offered for sale to the public if it is shown (a) that an offer of the shares, bonds, or debentures or of any of them for sale to the public was made within 6

months after the allotment or agreement to allot; or (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares, bonds, or debentures had not been so received.

(3) Section 1 of this act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 2 of this act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus (a) the net amount of the consideration received or to be received by the company in respect of the shares, bonds, or debentures to which the offer relates; and (b) the place and time at which the contract under which the said shares, bonds, or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

ALLOTMENT

SEC. 6. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in part I of the schedule to this act has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a check for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the check will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this act referred to as "the minimum subscription."

(3) The amount payable on application on each share shall not be less than 5 percent of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 48 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 percent per annum from the expiration of the forty-eighth day: *Provided*, That a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

SEC. 7. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares, bonds, or debentures unless at least 3 days before the first allotment of either shares, bonds, or debentures there has been delivered to the Commission for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorizing in writing, in the form and containing the particulars set out in the schedule to this act.

(2) This section shall not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding $500.

SEC. 8. (1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections of this act shall be voidable at the instance of the applicant within 1 month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within 1 month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee, respectively, for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: *Provided*, That proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

SEC. 9. (1) Whenever a company limited by shares or a company limited by guaranty and having a share capital makes any allotment of its shares, the company shall within 1 month thereafter deliver to the commission for registration (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment; the names, addresses, and descriptions of the allottees; and the amount, if any, paid or due and payable on each share; and (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within 1 month after the allotment deliver to the commission for registration the prescribed particulars of the contract.

(3) If default is made in complying with this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding $250 for every day during which the default continues: *Provided*, That, in case of default in delivering to the Commission within 1 month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper.

COMMISSIONS AND DISCOUNTS

SEC. 10. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

(a) The payment of the commission is authorized by the articles; and

(b) The commission paid or agreed to be paid does not exceed 10 percent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and

(c) The amount or rate percentage of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the commission for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the commission of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding $125.

SEC. 11. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any bonds or debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

SEC. 12. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guaranty, the provision of security, or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company: *Provided*, That nothing in this section shall be taken to prohibit (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business; (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees

of fully paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company; (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to subsection (1) of this section shall be shown as a separate item in every balance sheet of the company.

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding $500.

ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT DISCOUNT

SEC. 13. (1) Subject to the provisions of this section, a company limited by shares may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed: *Provided*, That—

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;

(d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding $500.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection: *Provided*, That where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within 1 month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

SEC. 14. (1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued: Provided, That (a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the State under which the company is chartered; (b) the resolution must specify the maximum rate of discount at which the shares are to be issued; (c) not less than 1 year must at the date of the issue have elapsed since the date on which the company was entitled to commence business; and (d) the shares to be issued at a discount must be issued within 1 month after the date on which the issue is sanctioned by the State or within such extended time as the State may allow.

(2) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the State for an order sanctioning the issue, and on any such application the State, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

PART II

RESTRICTIONS OF SALE OF SHARES AND OFFERS OF SHARES FOR SALE

SEC. 15. (1) It shall not be lawful for any person—

(a) to issue, circulate, or distribute in the United States any prospectus offering for subscription shares in bonds or debentures of a company incorporated or to be incorporated outside the United States, whether the company has or has not established, or when formed will or will not establish, a place of business in the United States, unless—

(i) before the issue, circulation, or distribution of the prospectus in the United States a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the commission;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this part of this act; or

(b) to issue to any person in the United States a form of application for share(s) in bonds or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this part of this act: *Provided*, That this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or bond or debenture holders of a company of a prospectus or form of application relating to shares in bonds or debentures of the company, whether an applicant for shares, bonds, or debentures will or will not have the right to renounce in favor of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in bonds or debentures of a company incorporated outside the United States are offered for sale to the public would, if the company concerned had been a company within the meaning of this act, have been deemed by virtue of section 38 of this act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares, bonds, or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares, bonds, or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 4 of this act shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation, or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding $2,500.

(7) In this and the next-following section the expressions "prospectus", "shares", and "debentures" have the same meanings as when used in relation to a company incorporated under this act.

SEC. 16. (1) In order to comply with this part of this act a prospectus in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of subsection (1) of the last foregoing section must—

(a) contain particulars with respect to the following matters:

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in the United States where the said instrument, enactments, or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(v) the date on which and the country in which the company was incorporated;

(vi) whether the company has established a place of business in the United States and, if so, the address of its principal office in the United States:

Provided, That the provisions of subparagraphs (i), (ii), (iii), and (iv) of this paragraph shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

(b) Subject to the provisions of this section, state the matters specified in part I of the schedule to this act (other than those specified in paragraph 1 of the said part I) and set out the reports specified in part II of the schedule subject always to the provisions contained in part III of the schedule:

Provided, That—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

(ii) in paragraph 3 of part I of the schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and

(iii) paragraph 1 of part III of the schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares, bonds, or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of noncompliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the noncompliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the noncompliance or contravention arose from an honest mistake of fact on his part; or

(c) The noncompliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided, That in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of part I of the schedule to this act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matter not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this act, apart from this section.

PART III

SEC. 17. (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection the expression "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside the United States, either by such a statement as aforesaid, or by such a prospectus as complies with this part of this act: *Provided*, That the provisions of this subsection shall not apply—

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in the United States and the offer so states and specifies the stock exchange; or

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters:

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in the United States where that principal can be served with process;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in the United States;

(c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided, and the rights of each class of shareholders in respect of capital dividends and voting;

(d) the dividends, if any, paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any bonds or debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in the United States or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in the United States where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes, or procures any person to act, in contravention of this section, he shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding $1,000, or to both such imprisonment and fine, and in the case of a second or subsequent offense to imprisonment for a term not exceeding 12 months or to a fine not exceeding $2,500, or to both such imprisonment and fine.

(6) Where a person convicted of an offense under this section is a company (whether a company within the meaning of this act or not), every director and every officer concerned in the management of the company shall be guilty of the like offense unless he proves that the act constituting the offense took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "shares" means the shares of a company, whether a company within the meaning of this act or not, and includes bonds or debentures and units; and the expression "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not, in relation to a company, be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted in the United States of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

Where the court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Supreme Court of the United States.

SCHEDULE

PART I

MATTERS REQUIRED TO BE STATED IN PROSPECTUS

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription, particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters;

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(d) working capital; and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, bonds, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a subpurchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, bonds, or debentures for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the 2 preceding years, or payable as commission (but not including commission to sub-

underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any share in, bonds or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II

REPORTS TO BE SET OUT IN PROSPECTUS

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said 3 years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares, bonds, or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

1. The provisions of this schedule with respect to the memorandum and the qualification, remuneration, and interest of directors; the names, descriptions, and addresses of directors or proposed directors; and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) The purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfillment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "subpurchaser" included a sublessee.

4. For the purposes of paragraph 8 of part I of this schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or 1 year, part II of this schedule shall have effect as if references to 2 years or 1 year, as the case may be, were substituted for references to 3 years.

6. The expression "financial year" in part II of this schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said part of this schedule be deemed to be a financial year.

The Securities Act of 1933 is repealed.

Mr. KEAN. I ask to have printed in the RECORD as part of my remarks a comparison of the United States Securities Act of 1933 with the British companies act of 1929.

The PRESIDING OFFICER. Without objection, it is so ordered.

The matter referred to is as follows:

COMPARISON OF THE UNITED STATES SECURITIES ACT OF 1933 WITH THE BRITISH COMPANIES ACT OF 1929

Since the approval by the President of the Securities Act of 1933 on May 27, 1933, much has been published concerning that act. A great many of these publications have criticized the act and compared it generally with the British companies act of 1929. However, there has been, apparently, no effort made to set up in parallel columns the comparable provisions of the two acts. Such a parallel comparison has been attempted in this memorandum with the hope that it may be helpful to those who wish to familiarize themselves with the similarities and differences between the acts in question.

In considering these acts it should be noted that the United States act deals solely with securities and the offering and sale thereof, its central idea being the protection of investors through the imposition upon sellers of responsibility for full disclosure, while the British act deals comprehensively with companies, their organization, operation, etc. Consequently only relatively few of the provisions of the British act are comparable to the United States act. The particular provisions of the British act which deal with matters relating to the issue of securities and are, therefore, comparable to the United States act, are largely included in the following-named sections of the British act, to wit: Sections 34 to 38, inclusive, sections 354 to 356, inclusive, section 380, and the fourth schedule.

In considering the following parallel column comparison of the two acts, the following general differences, among others, will be apparent:

(1) The United States act covers original and subsequent transactions in securities; the British act deals chiefly with the original offer of securities to the public and not to subsequent transaction in those securities.

(2) Under the United States act the Federal Trade Commission has broad powers as to requiring the filing of additional information, making investigations of companies whose securities are registered or sought to be registered, and as to suspending the effectiveness of a registration statement; the registrar under the British act merely acts in a ministerial capacity as respects a prospectus; there are no "rules and regulations" nor bureaucracy as the act itself sets forth all the matters required for full disclosure and leaves nothing to the discretion of executive officers.

(3) Under the United States act there is a 20-day "waiting period" between the filing of the registration statement and the time the security can be offered; under the British act the security can be offered as soon as the prospectus is filed.

(4) Under the United States act a greater number of persons are subjected to civil liability than under the British act; for example, experts (accountants, appraisers, attorneys, etc.) are not liable under the British act.

(5) The United States act gives the right of recovery not only to the original purchasers of securities but to all others who may subsequently purchase such securities; under the British act the right of recovery is limited to the original purchasers and consequently there can be no "pyramiding" of damages.

(6) Under the United States act the same civil liabilities (with the same defenses) are created for the omission to "state a material fact required to be stated therein or necessary to make the statement therein not misleading" as for "an untrue statement of a material fact" in the registration statement; under the British act civil liability is imposed only for untrue statements, although by court decisions this has been construed to include partial statements and some omissions.

(7) Under the United States act one suing for damages need not show that he relied on the statements contained in the registration statement nor that the damages resulted from an error or omission in that statement but need only show the error or omission; under the British act the person suing must prove that he relied on the prospectus and also that the damages resulted from an untrue statement therein contained.

(8) Under the United States act directors, in order to escape liability, must show not only that they had reasonable grounds to believe and did believe the statement to have been true but also that they had made a "reasonable investigation", and the standard of reasonableness is the highest— i.e., that of a fiduciary; under the British act the directors need only show they had reasonable grounds to believe the statements to be true (and if the statement is that of an "expert" the person suing must show that the directors had no reasonable ground to believe the expert "competent").

In the following comparison the provisions of the British act have been separated and rearranged so as to place them insofar as possible opposite comparable provisions of the United States act and, in so doing, the continuity of the British act has necessarily been destroyed. Therefore, in order that the reader may, if he so desires, consider the provisions of the British act as a

whole and so that citations in the comments may be more readily followed and understood, it has seemed advisable to set out in full the above-referred-to provisions of the British act. These provisions appear following the parallel column comparison.

COMPARISON OF THE UNITED STATES SECURITIES ACT OF 1933 WITH PROVISIONS OF THE BRITISH COMPANIES ACT OF 1929 DEALING WITH SIMILAR MATTERS, WITH COMMENTS

NOTE.—The provisions of the United States act appear in regular sequence and the British act is rearranged so as to place opposite each United States provision the British provision most nearly corresponding thereto (so far as this can be done and leave the British act understandable). The exact language of the British provisions is given with citation.

UNITED STATES SECURITIES ACT OF 1933	BRITISH COMPANIES ACT OF 1929	COMMENTS
TITLE I		
SHORT TITLE		
SECTION 1. This title may be cited as the "Securities Act of 1933."	This act may be cited as the Companies act, 1929 (sec. 385).	
Definitions		
SEC. 2. When used in this title, unless the context otherwise requires—	380. (1) In this act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):	
(1) The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment, contract, voting-trust certificate, certificate of interest in property, tangible or intangible, or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for or warrant or right to subscribe to or purchase, any of the foregoing.	"Share" means share in the share capital of a company, and includes stock, except where a distinction between stock and shares is expressed or implied. "Debenture" includes debenture stock, bonds, and any other securities of a company, whether constituting a charge on the assets of the company or not.	It should be noted that the British act only applies to "shares" and "debentures" of a "company", whereas the United States act applies to securities by whomever issued (with certain exceptions).
	"Company" means a company formed and registered under this act or an existing company. "Existing company" means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, but does not include a company registered under the said enactments in Northern Ireland or the Irish Free State.	"The context otherwise requires" in certain portions of the British act that the word "company" be extended to mean a corporation organized outside of Great Britain, and the provisions as to prospectus and liability apply to such corporations offering securities in Great Britain. (See secs. 354, 355.)
(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.		
(3) The term "sale", "sell", "offer to sell", or "offer for sale" shall include every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value; except that such terms shall not include preliminary negotiations or agreements between an issuer and any underwriter, any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be a sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.		It should be noted that the British act applies principally to the original offer or sale to the public.
(4) The term "issuer" means every person who issues or proposes to issue any security or who guarantees a security either as to principal or income; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor		

UNITED STATES SECURITIES ACT OF 1933—CON.

or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued, and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used.

(5) The term "Commission" means the Federal Trade Commission.

(6) The term "Territory" means Alaska, Hawaii, Puerto Rico, the Philippine Islands, Canal Zone, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum accompanying such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular advertisement, letter, or communication, written or by radio, which offers any security for sale; except that (a) a communication shall not be deemed a prospectus if it is proved that prior to such communication a written prospectus meeting the requirements of section 10 was received, by the person to whom the communication was made, from the person making such communication or his principal, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, and state by whom orders will be executed.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

Exempted securities

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Any security which, prior to or within 60 days after the enacting of this title, has been sold or disposed of by the issuer or bona fide offered to the public, but his exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such 60 days;

BRITISH COMPANIES ACT OF 1929—CON.

"The registrar of companies" or, when used in relation to registration of companies, "the registrar", means the registrar or other officer performing under this act the duty of registration of companies in England or Scotland, or in the stannaries, as the case requires.

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

COMMENTS—CON.

It shall be noted that the British act requires the "prospectus" to be filed, so that the "registration statement" under the United States act and the "prospectus" under the British act are comparable for most purposes.

The United States act applies (disregarding the exceptions) to all transactions in all securities, whereas the British act applies to the original offer of securities of companies to the public; however, under the United States act certain securities are exempted, and this exemption, therefore, exempts all transactions in that security.

UNITED STATES SECURITIES ACT OF 1933—con.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories exercising an essential governmental function, or by any corporation created and controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States, or by any national bank, or by any banking institution organized under the laws of any state or Territory, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank;

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding 9 months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual;

(5) Any security issued by a building-and-loan association, homestead association, savings-and-loan association, or similar institution, substantially all of the business of which is confined to the making of loans to members (but the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 percent of the face value of such security), or any security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932;

(6) Any security issued by a common carrier which is subject to the provisions of section 20a of the Interstate Commerce Act, as amended;

(7) Certificates issued by a receiver or by a trustee in bankruptcy, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia.

(b) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $100,000.

Exempted transactions

SEC. 4. The provisions of section 5 shall not apply to any of the following transactions:

BRITISH COMPANIES ACT OF 1929—con.

COMMENTS—con.

In addition to exempting certain securities from almost all provisions of the act, the United States act exempts certain transactions in connection with any secur-

UNITED STATES SECURITIES ACT OF 1933—CON.	BRITISH COMPANIES ACT OF 1929—CON.	COMMENTS—CON.
		ity from the provisions of section 5. It should be noted that this exemption is limited to section 5, and that the other portions of the act apply to these transactions. See particularly sections 12 A (2) and 17 of the United States act. Although a transaction in a security may be exempted by this section 4, nevertheless subsequent transactions in the security may be covered by section 5, the exemption going to the transaction only and not to the security or future transactions.
(1) Transactions by any person other than an issuer, underwriter, or dealer; transactions by an issuer not with or through an underwriter and not involving any public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions within 1 year after the last date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter (excluding in the computation of such year any time during which a stop order issued under section 8 is in effect as to the security), and except transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.	Provided that this subsection shall not apply if it is shown that the form of application was issued either— (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares or debentures which were not offered to the public (sec. 35 (3)).	"This subsection" referred to in this proviso in the British act is the subsection making it unlawful "to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements" as to information, etc., to be contained in a prospectus (sec. 35).
	38. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.	Although the British act as shown above provides an exemption as to dealing with underwriters, the offer to the public (by the underwriters or others) is deemed a prospectus and is subject to the pertinent provisions of the act.
	(2) For the purposes of this act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown— (a) That an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or (b) That at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received (sec. 38).	
(2) Broker's transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders.	Provided that the provisions of this subsection shall not apply— (a) Where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in Great Britain and the offer so states and specifies the stock exchange; or (sec. 356 (2)).	This proviso in the British act is contained in the subsection which otherwise requires any written offer to the public or a member of the public (with certain other exceptions) to be accompanied by a writing containing certain information. (See sec. 356.)
(3) The issuance of a security of a person exchanged by it with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with such exchange; or the issuance of securities to the existing security holders or other existing creditors of a corporation in the process of a bona fide reorganization of such corporation under the supervision of any court, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors.	(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favor of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently (sec. 35 (5)).	This exception in the British act applies to the entire section 35. In addition to the requirements shown in the next preceding comment, section 35 contains provisions relating to civil liability, etc., none of which apply to offers to existing stockholders or debenture holders.

UNITED STATES SECURITIES ACT OF 1933—CON.	BRITISH COMPANIES ACT OF 1929—CON.	COMMENTS—CON.
Prohibitions relating to interstate commerce and the mails SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly— (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale. (b) It shall be unlawful for any person, directly or indirectly— (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security registered under this title, unless such prospectus meets the requirements of section 10; or (2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of section 10. (c) The provisions of this section relating to the use of the mails shall not apply to the sale of any security where the issue of which it is a part is sold only to persons resident within a single State or Territory, where the issuer of such securities is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.	(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section (sec. 35 (3)).	The United States act makes it unlawful to make any interstate sale or offer of sale of any security covered by the act unless a registration statement is in effect and further, prohibits the use of any prospectus that does not meet the requirements of section 10, and requires a security to be accompanied by or preceded by such a prospectus. The United States act covers many more transactions than the British act. Section 35 of the British act makes it unlawful to make an original offer to subscribe for securities unless the offer is accompanied by a prospectus which has been filed pursuant to the act.
	(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside of Great Britain, either by such a statement as aforesaid, or by such a prospectus as complies with this part of this act (sec. 356 (2)). Provided that the provisions of this subsection shall not apply— (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in Great Britain and the offer so states and specifies the stock exchange; or (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or (c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares (sec. 356 (2)).	This subsection of the British act requires any offer of shares (other than as excepted as shown below) to be made in writing, but the exceptions are very broad. The exemptions from the requirements under the British act that an offer must be in writing (sec. 356 (2)) cover all securities quoted on or dealt in on stock exchanges in Great Britain, or securities allotted for sale to the public (see sec. 38), or where the offer was made to regular customers.
Registration of securities and signing of registration statement SEC. 6. (a) Any security may be registered with the Commission under the terms and conditions hereinafter provided by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this title. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.	(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the registrar of companies for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration (sec. 34 (2)). (3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section (sec. 34 (3)).	
	(3) Section 34 of this act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company * * * (sec. 38 (3)). (4) Where a person making an offer to which this section relates is a company or	Section 38 of the British act relates to the instances "where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public" (for example, sold to a dealer for resale to the public) and pro-

UNITED STATES SECURITIES ACT OF 1933—con.	BRITISH COMPANIES ACT OF 1929—con.	COMMENTS—con.
	a firm, it shall be sufficient if the document aforesaid be signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing (sec. 38 (4)).	vides that the offer for sale to the public by such person (i.e., dealer) shall be deemed a prospectus. The dealer is required in such instance to sign the prospectus.
(b) At the time of filing a registration statement the applicants shall pay to the Commission a fee of 0.01 of 1 percent of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than $25. (c) The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b). (d) The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe. (e) No registration statement may be filed within the first 40 days following the enactment of this act.		
Information required in registered statement SEC. 7. The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in schedule A, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in schedule B; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.	35. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in part I of the fourth schedule to this act and set out the reports specified in part II of that schedule, and the said parts I and II shall have effect subject to the provisions contained in part III of the said schedule (sec. 35). (4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section (sec. 34).	The British act applies only to securities offered by a company not to those issued by governments or political subdivisions thereof. The British act does not require consent from "experts", etc., who have prepared reports that may be used in the prospectus—nor is liability imposed on these "experts" as it is under the United States act.
Taking effect of registration statements and amendments thereto SEC. 8. (a) The effective date of a registration statement shall be the twentieth day after the filing thereof, except as hereinafter provided, and except that in case of securities of any foreign public authority, which has continued the full service of its obligations in the United States, the pro-	34. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.	Under the British act the prospectus need only be filed with the registrar, that official having only the clerical duty to receive and file such prospectus. Under the British act the date of filing is the important date, but under the United States act the statement does not become "effective"

UNITED STATES SECURITIES ACT OF 1933—CON.

ceeds of which are to be devoted to the refunding of obligations payable in the United States, the registration statement shall become effective 7 days after the filing thereof. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

(b) If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than 10 days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within 10 days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order, the Commission shall so declare, and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

(c) An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission, may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within 15 days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order the Commission shall so declare and thereupon the stop order shall cease to be effective.

(e) The Commission is hereby empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets, and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic

BRITISH COMPANIES ACT OF 1929—CON.

COMMENTS—CON.

until the twentieth day after its filing, and this date may be postponed by the Federal Trade Commission in certain events.

Under the United States act the Commission has supervisory powers over the statement and can require its amendment and refuse to permit it to become effective.

Under the United States act the Commission may issue a "stop order" which suspends the effectiveness of a statement registered with it. The British registrar has no such power—a prospectus once filed with him, his duties and powers in respect thereto cease.

Under the United States act, the Commission has broad powers to investigate the books, etc., of the issuer, underwriter and others if it wishes to determine whether a "stop order" should issue. The registrar has no such powers.

UNITED STATES SECURITIES ACT OF 1933—CON.

notice to the address given in such statement.

Court review of orders

SEC. 9. (a) Any person aggrieved by an order of the Commission may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the Court of Appeals of the District of Columbia, by filing in such court, within 60 days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari, or certification, as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

Information required in prospectus

SEC. 10. (a) A prospectus—

(1) when relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the same statements made in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of schedule A;

(2) when relating to a security issued by a foreign government or political subdivision thereof shall contain the same statements made in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of schedule B.

(b) Notwithstanding the provisions of subsection (a)—

(1) when a prospectus is used more than 13 months after the effective date of the registration statement, the information in the statements contained therein shall be as of a date not more than 12 months prior to such use;

(2) there may be omitted from any prospectus any of the statements required under such subsection (a) which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors;

(3) any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

BRITISH COMPANIES ACT OF 1929—CON.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters:

(a) Whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Great Britain where that principal can be served with process.

(b) The date on which and the country in which the company was incorporated and the address of its registered or principal office in Great Britain.

(c) The authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided, and the rights of each class of shareholders in respect of capital, dividends, and voting.

(d) The dividends, if any, paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer; and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect.

(e) The total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) The names and addresses of the directors of the company.

COMMENTS—CON.

Under the United States act an aggrieved party can obtain a review of any order issued by the Commission, but in any such review the findings of facts by the Commission, if supported by evidence, shall be conclusive.

These provisions of the British act specify what must be contained in or accompany an offer of shares to the public if that offer is in writing. (See sec. 356.) In the British act such offer is not termed a "prospectus" but appears to be very analogous to the "prospectus" of the United States act. There are broad exemptions in the British act dispensing with the requirements as to the contents of the written offer in certain instances. (See sec. 356 (2) proviso.)

UNITED STATES SECURITIES ACT OF 1933—CON.

(4) in the exercise of its powers under paragraphs (2) and (3) of this subsection, the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use and by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate to such use and consistent with the public interest and the protection of investors.

(c) The statements or information required to be included in a prospectus by or under authority of subsection (a) or (b), when written, shall be placed in a conspicuous part of the prospectus in type as large as that used generally in the body of the prospectus.

(d) In any case where a prospectus consists of a radio broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms of prospectuses used in connection with the sale of securities registered under this title.

Civil liabilities on account of false registration statement

SEC. 11. (a) In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated herein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions), or partner in, the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation which purports to have been prepared or certified by him;

(5) every underwriter with respect to such security.

BRITISH COMPANIES ACT OF 1929—CON.

(g) Whether or not the shares offered are fully paid up; and if not, to what extent they are paid up.

(h) Whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in Great Britain or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted.

(i) Where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Great Britain where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued (sec. 356 (3)).

37. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

(a) every person who is a director of the company at the time of the issue of the prospectus; and ("director" includes any person occupying the position of director by whatever name called;) (Sec. 380)

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

COMMENTS—CON.

Under the United States act any person acquiring the security may recover from the persons liable, whereas under the British act only the person who originally subscribed "on the faith of the prospectus" can recover. Moreover, under the British act the person can only recover the "loss or damage" sustained by reason of the "untrue statement" (sec. 37) or of "the omission" (sec. 35).

Section 37 of the British act provides liabilities where an "untrue statement" is contained in the prospectus. Section 35 of the British act provides for liability where the prospectus does not comply with the requirements of that section (omits to state facts required to be stated). No definite civil liability is set up by section 35, but the British courts have held civil liability to arise by violation of that section. Section 35 gives broader defenses than section 37. The provisions of section 35 are set forth separately at the end of section 11 of the United States act as the provisions of sections 37 and 35 could not both be parallel to section 11.

See section 38 of the British act where an offer for sale to the public in relation to securities allotted by the company with a view to their being offered to the public is made a "prospectus", and civil liability is the same as if the securities had been offered direct to the public, "but without prejudice to the liability, if any, of the persons by whom the offer is made in respect to misstatements contained in the document or otherwise in respect thereof." (Sec. 38.)

UNITED STATES SECURITIES ACT OF 1933—CON.	BRITISH COMPANIES ACT OF 1929—CON.	COMMENTS—CON.
(b) Notwithstanding the provisions of subsection (a) no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof—		Under the United States act the "issuer" (usually the company whose securities are offered) is not given the benefit of the following defenses, but is liable in any event. The British act does not by its terms make such company liable in the first instance (but see below as to right to recision under general law of contracts induced by misrepresentation).
(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or	(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent; or	
(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1), and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or	(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or	
	(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or	
(3) that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe, and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading; and	(iv) that— (a) as regards every untrue statement not purporting to be made on the authority of any expert, or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and	Under the United States act the defendant must show not only that he had reasonable grounds to believe, and did believe, the statement to have been true but also that he had made a "reasonable investigation", and the standard of a reasonableness is the highest—i.e., that of a fiduciary. The British act contains no such unreasonable requirement for investigation.
(B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe, and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and		
(C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that such part of the registration statement fairly represented the statement of the expert or was a fair copy of or extract from the report or valuation of the expert; and	(b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation; and	Under the United States act the defendant must show he had reasonable ground to believe the statements were true and that there were no material omissions. Under the British act it must be proved that the defendant "had no reasonable ground to believe" the expert "was competent."
(D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had reasonable ground to believe and did believe, at the time such part of the registraton statement became effective, that the statements therein were true, and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that such part	(c) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document; Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report, or valuation as is mentioned	Under the United States act the defendant must show he had reasonable ground to believe and did believe that the statements contained in a public document were true, whereas under the British act it is only necessary to show a correct and fair extract.

UNITED STATES SECURITIES ACT OF 1933—CON.

of the registration statement fairly represented the statement made by the official person or was a fair copy of or extract from the public official document.

(c) In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a person occupying a fiduciary relationship.

(d) If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

(e) The suit authorized under subsection (a) may be either (1) to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or (2) for damages if the person suing no longer owns the security.

(f) All or any one or more of the persons specified in subsection (a) shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(g) In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

(NOTE.—Sec. 11 of the United States act covers alike untrue statements and omissions. See above.)

BRITISH COMPANIES ACT OF 1929—CON.

in paragraph (iv) (b) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purpose of this section—

The expression "promoter" means a promotor who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

(NOTE.—Sec. 35 of the British act specifies the matters which must be set out in the prospectus. The following provisions relating to civil liability for failure to comply with these requirements then follow.)

COMMENTS—CON.

Under the British act no specific provision is made for the return of the security and the recovery of the purchase price, but, considering his contract of purchase under the general law, the person who originally applied for shares on the faith of the prospectus (and only such person) can rescind the contract and recover back his purchase price from the company if he can show—

(A) that a misstatement was made by or on behalf of the company;

(B) that it was a material one;

(C) that he relied upon it in taking the shares;

(D) that he commenced proceedings before liquidation and within a reasonable time.

The British act gives the right to recover damages from directors, etc. (not from the company), but such right is limited to the original purchaser and there can be no pyramiding by suits by successive purchasers from the original purchaser.

Under cases decided in England the measure of damages is the difference between the actual value (not the market price) of the shares at the time of allotment and the sum paid for them. The United States act although limiting the recovery by any one person to the amount of the price at which the security was first offered permits successive purchasers to sue and therefore the final aggregate liability may be much more than the original price.

Section 35 of the British act requires certain things to be set forth in the prospectus, but does not contain any provisions as to what the civil liability is if any of the things are omitted to be set out. However, that it

UNITED STATES SECURITIES ACT OF 1933—CON.	BRITISH COMPANIES ACT OF 1929—CON.	COMMENTS—CON.
		was intended to impose a liability is fairly clear from subsection 4, which states there is no liability in certain instances. It has been held in England that a plaintiff in order to establish his right to recovery of damages must show not merely the omission to state some matter required to be stated in the prospectus but that the omission was equivalent to misstatements, and that the plaintiff has suffered loss as a result of the omission.
	(4) In the event of noncompliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the noncompliance or contravention, if—	The United States act places excuses for false statements and for omissions on the same basis. Section 11 (a) and 11 (b). The British act more readily excuses omissions.
	(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or	Under the British act a person is excused from omitting to state something which he can prove he did not know or if he can prove he made an honest mistake of fact. This is reasonable and does not require directors and others to be "insurers" but only to use proper care.
	(b) he proves that the noncompliance or contravention arose from an honest mistake of fact on his part; or	
	(c) the noncompliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused;	Omission of matters which the court feels were immaterial or the omission otherwise excusable do not give rise to liability under the British act. This seems to be about the same thing the United States act aims at when it creates liabilities in re omissions of "material facts."
	Provided, That in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of part I of the fourth schedule of this act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.	Paragraph 15 referred to in this section deals with disclosing in the prospectus of the interest of any director in property to be acquired by the company and places the burden of proof on the party seeking to recover by reason of the omission of any such statement to show that the defendant had knowledge of the matter not disclosed. Throughout the entire provisions of the United States act section 11 (b) the burden of proof is on the defendant.
Civil liabilities arising in connection with prospectuses and communication SEC. 12. Any person who— (1) sells a security in violation of section 5, or (2) sells a security (whether or not exempted by the provisions of section 3, other than paragraph (2) of subsection (a) thereof), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission) and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission. shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.	(8) Where any person is convicted in England of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares (sec. 356 (8)).	This provision of the British act appears most nearly analogous to section 12 of the United States act. "This section" referred to in the British provision is section 356, which requires a written offer to the public to contain certain information.
Limitation of actions SEC. 13. No action shall be maintained to enforce any liability created under section 11 or section 12 (2) unless brought within 2 years after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 12 (1), unless brought within 2 years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 11 or section 12 (1) more than 10 years after the security was bona fide offered to the public.		In England, the general statute of limitations applies and will be a bar to proceedings after 6 years and the time commences to run from the date of allotment, unless there was "concealed fraud." (Handbook on Joint Stock Companies, Gore-Browne, 38th ed.)
Contrary stipulations void SEC. 14. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission shall be void.	(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract,	"This section" referred to in the provision of the British act is section 35 which requires a prospectus to contain certain information. A similar provision is contained in section 355 relating to a prospectus of a

UNITED STATES SECURITIES ACT OF 1933—con.

Liability of controlling persons

SEC. 15. Every person who, by or through stock ownership, agency or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable.

Additional remedies

SEC. 16. The rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

Fraudulent interstate transactions

SEC. 17. (a) It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud; or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) The exemptions provided in section 3 shall not apply to the provisions of this section.

State control of securities

SEC. 18. Nothing in this title shall affect the jurisdiction of the securities commismission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.

Special powers of Commission

SEC. 19. (a) The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income ac-

BRITISH COMPANIES ACT OF 1929—con.

document, or matter not specifically referred to in the prospectus, shall be void (sec. 35(2)).

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this act apart from this section (sec. 35 (6)).

COMMENTS—con.

company organized outside of Great Britain. (See sec. 355(2).)

The British act does not carry the liability of the company to stockholders who may control the company.

"This section" referred to in the provision of the British act is section 35, which requires a prospectus to contain certain information and deals with civil liability. A similar provision is contained in section 355, relating to offers of securities of companies organized outside of Great Britain. (See sec. 355 (4).)

The British act does not cover fraudulent transactions as such, but leaves the parties to their rights under general law relating to fraud.

It should be noted that the acts declared by section 17 of the United States act to be unlawful apply even as to securities that are otherwise exempt from the act under section 3.

Under the United States act the Commission is given broad power to prescribe rules and regulations to carry out the provisions of the act and in its investigations under the act can require persons to testify and submit books, etc., for scrutiny. The Registrar under the British act has no such powers.

UNITED STATES SECURITIES ACT OF 1933—con.

counts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but insofar as they relate to any common carrier subject to the provisions of section 20 of the Interstate Commerce Act, as amended, the rules and regulations of the Commission with respect to accounts shall not be inconsistent with the requirements imposed by the Interstate Commerce Commission under authority of such section 20. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe.

(b) For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this title, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

Injunctions and prosecution of offenses

SEC. 20. (a) Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this title, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, it may in its discretion, bring an action in any district court of the United States, United States court of any Territory, or the Supreme Court of the District of Columbia to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this title. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Upon application of the Commission the district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia, shall also have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof.

Hearings by Commission

SEC. 21. All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

Jurisdiction of offenses and suits

SEC. 22. (a) The district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia shall have jurisdiction of offenses and violations under this title and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, of all suits in equity

BRITISH COMPANIES ACT OF 1929—con.

COMMENTS—con.

Under the United States act the Commission may institute proceedings for an injunction to prohibit practices which are in violation of the act or may refer the matter to the Attorney General for a criminal prosecution. Under the British act the registrar has no such powers.

UNITED STATES SECURITIES ACT OF 1933—CON.

and actions at law brought to enforce any liability or duty created by this title. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347). No case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against it in the Supreme Court or such other courts.

(b) In case of contumacy or refusal to obey a subpena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission, may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence, if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Unlawful representations

SEC. 23. Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing provisions of this section.

Penalties

SEC. 24. Any person who willfully violates any of the provisions of this title, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statement therein not misleading, shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both.

BRITISH COMPANIES ACT OF 1929—CON.

(5) If a prospectus is issued without a copy thereof being so delivered, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding £5 for every day from the date of the issue of the prospectus until a copy thereof is so delivered (sec. 34 (5)).

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding £500 (sec. 35 (3)).

COMMENTS—CON.

The "so delivered" appearing in this subsection of the British act refers to the requirement of section 34 that a copy of the prospectus must be filed with the registrar.

"This subsection" here referred to in the British act provisions is (3) of section 35, which makes it unlawful to issue a form of application for shares unless accompanied by a prospectus.

UNITED STATES SECURITIES ACT OF 1933—CON.

Jurisdiction of other governmental agencies over securities

SEC. 25. Nothing in this title shall relieve any person from submitting to the respective supervisory units of the Government of the United States information, reports, or other documents that are now or may hereafter be required by any provision of law.

Separability of provisions

SEC. 26. If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SCHEDULE A

(1) The name under which the issuer is doing or intends to do business.

(2) The name of the State or other sovereign power under which the issuer is organized.

(3) The location of the issuer's principal office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice.

(4) The names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within 2 years prior to the filing of the registration statement.

(5) The names and addresses of the underwriters.

(6) The names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 percent of any class of stock of the issuer, or more than 10 percent in the aggregate of the outstanding stock of the issuer as of a date within 20 days prior to the filing of the registration statement.

(7) The amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within 20 days prior to the filing of the registration statement, and, if possible, as of 1 year prior thereto, and the amount of the securities for which the registration statement is filed, to which such persons have indicated their intention to subscribe.

(8) The general character of the business actually transacted or to be transacted by the issuer;

BRITISH COMPANIES ACT OF 1929—CON.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures in contravention of the provisions of this section shall be liable to a fine not exceeding £500 (sec. 354 (6)).

(5) If any person acts, or incites, causes, or procures any person to act, in contravention of this section, he shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding £200, or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding 12 months or to a fine not exceeding £500, or to both such imprisonment and fine (sec. 356 (5)).

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent (sec. 356 (6)).

FOURTH SCHEDULE

(v) The date on which and the country in which the company was incorporated (sec. 355 (1)).

(vi) Whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain (sec. 355 (1)).

4. The names, descriptions, and addresses of the directors or proposed directors (fourth schedule, pt. I, 14).

14. The names and addresses of the auditors, if any, of the company (fourth schedule, pt. I, 14).

(1) the objects of the company (sec. 355 (1));

Provided, That—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirements that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and (sec. 355 (1))

COMMENTS—CON.

Section 354 of the British act here referred to is a section dealing with the prospectus of companies organized outside of Great Britain.

"This section" here referred to is section 356 of the British act which requires, among other things, that an offer, if in writing, must be accompanied by a statement containing specified information.

Under the British act this need be shown only in a prospectus of a company organized outside of Great Britain (sec. 355).

Under the British act this need be shown only in a prospectus of a company organized outside of Great Britain (sec. 355).

Under the British act this need be shown only in a prospectus of a company organized outside of Great Britain (sec. 355).

UNITED STATES SECURITIES ACT OF 1933—CON.	BRITISH COMPANIES ACT OF 1929—CON.	COMMENTS—CON.
(9) A statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof—or, if it has no par value, the stated or assigned value thereof—a description of the respective voting rights, preferences, conversion, and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof.	16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively (fourth schedule, pt. I, 16). 2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company (fourth schedule, pt. I, 2).	
(10) A statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 percent in the aggregate of such options.		
(11) The amount of capital stock of each class issued or included in the shares of stock to be offered.		
(12) The amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect.		
(13) The specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated.	5. Where shares are offered to the public for subscription particulars as to— (i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters: (a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue; (b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company; (c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters; (d) working capital; and (ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided (fourth schedule, pt. I, 5).	
(14) The remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year.	3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors (fourth schedule, pt. I, 3).	The British act requires a statement of any provisions in the charter of a company as to the remuneration of directors but does not require that the amounts actually paid be shown.
(15) The estimated net proceeds to be derived from the security to be offered.	(ii) In paragraph 3 of part I of the said Fourth Schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and (sec. 355 (1))— (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and (sec. 38 (3) a)—	This provision of the British act applies only as respects companies organized outside of Great Britain (sec. 355).
(16) The price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation.	The amount payable on application and allotment on each share * * * (fourth schedule, pt. I, 6).	Under the British act this need be shown only where the securities have been allotted to one or a few persons with a view to their disposing of the securities to the public (sec. 38).
(17) All commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the	10. The amount, if any, paid within the 2 preceding years, or payable, as commission (but not including commission to sub-	

UNITED STATES SECURITIES ACT OF 1933—CON.

sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other person in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated.

(18) The amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges.

(19) The net proceeds derived from any security sold by the issuer during the 2 years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security.

(20) Any amount paid within 2 years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment.

(21) The names and addresses of the vendors and the purchase price of any property, or goodwill, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition.

(22) Full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 percent of any class of stock or more than 10 percent in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within 2 years preceding the filing of the registration statement or proposed to be acquired at such date.

(23) The names and addresses of counsel who have passed on the legality of the issue.

(24) Dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than 2 years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and

BRITISH COMPANIES ACT OF 1929—CON.

underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission (fourth schedule, pt. I, 10).

11. The amount or estimated amount of preliminary expenses (fourth schedule, pt. I, 11).

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted (fourth schedule, pt. I, 6).

7. The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued (fourth schedule, pt. I, 7).

12. The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for any such payment (fourth schedule, pt. I, 12).

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a subpurchaser, the amount so payable to each vendor (fourth schedule, pt. I, 8).

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for good will (fourth schedule, pt. I, 9).

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company (fourth schedule, pt. I, 15).

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on, or intended to be carried on, by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected (fourth schedule, pt. I, 13).

COMMENTS—CON.

The United States act requires a concise statement of the general effect of every material contract and also requires (sec. 30 of schedule A) a copy of the contracts to be filed. The British act requires only the dates and the parties with a statement of where and when the contracts may be inspected.

UNITED STATES SECURITIES ACT OF 1933—CON.

every material patent or contract for a material patent right, and every contract by or with a public-utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of $2,500 per year in cash or securities or anything else of value), shall be deemed a material contract.

(25) A balance sheet as of a date not more than 90 days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of $20,000 to any officer, director, stockholder, or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than 90 days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than 1 year prior to the filing of the registration statement, shall be submitted.

(26) A profit-and-loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the 2 preceding fiscal years, year by year, or, if such issuer has been in actual business for less than 3 years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than 6 months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the 3 years or lesser period as to the character of the charges, dividends, or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant.

(27) If the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit-and-loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for 3 preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than 90 days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than 90 days prior to the filing of the registration statement.

(28) A copy of any agreement or agreements (or, if identic agreements are used, the forms thereof) made with any underwriter, including all contracts and agree-

BRITISH COMPANIES ACT OF 1929—CON.

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said 3 years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact (fourth schedule, pt. II, 1).

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus (fourth schedule, pt. II, 2).

(b) The place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected (sec. 38 (3) (b).

COMMENTS—CON.

Under the British act this need be shown only where the securities have been allotted to one or a few persons with a view to their disposing of the securities to the

UNITED STATES SECURITIES ACT OF 1933—CON.	BRITISH COMPANIES ACT OF 1929—CON.	COMMENTS—CON.
ments referred to in paragraph (17) of this schedule.		public. The British act does not require copies to be filed, but only that they be available for inspection (sec. 38).
(29) A copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary into the English language.		
(30) A copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of investors.		
(31) Unless previously filed and registered under the provisions of this title, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its origanization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization.	1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them, respectively (fourth schedule, pt. I, 1). * * * Particulars with respect to—	Under the British act this information is not required in a prospectus of a company organized outside Great Britain (sec. 355 (b)). Under the British act this need be shown only in a prospectus of a company organized outside Great Britain (sec. 355). The British act does not require copies to be filed but only that they be available for inspection. These provisions do not apply to a prospectus issued "more than 2 years after the date at which the company is entitled to commence business" (proviso to sec. 355 (1) (a)).
	(ii) the instrument constituting or defining the constitution of the company; (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected; (iv) an address in Great Britain where the said instrument, enactments, or provisions, or copies thereof, and if the same are in a foreign language, a translation thereof certified in the prescribed manner, can be inspected (sec. 355 (1)). 17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on (fourth schedule, pt. I, 17).	
(32) A copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered. In case of certificates of deposit, voting-trust certificates, collateral-trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment-trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.		Under the United States act the Federal Trade Commission can make rules and regulations as to the information which must be stated in a registration statement covering securities of other than corporations. There are no similar provisions in the British act, as that act only covers securities of "companies."
	PART III PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE	
	1. The provisions of this schedule with respect to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business. (iii) Paragraph I of part III of that schedule shall have effect as if the reference to the memorandum were omitted therefrom (sec. 355 (1)).	The provisions of part III of the fourth schedule of the British act clarify and qualify to a certain extent the previously quoted provisions of parts I and II of that schedule. Part III is here given in its entirety instead of splitting provisions up and placing these provisions under the provisions of parts I and II to which part III applies.
	2. Every person shall for the purpose of this schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where— (a) the purchase money is not fully paid at the date of the issue of the prospectus; (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; (c) the contract depends for its validity or fulfillment on the result of that issue.	Under the British act this applies only where the prospectus is of a company organized outside of Great Britain.

UNITED STATES SECURITIES ACT OF 1933—CON.

SCHEDULE B

(1) Name of borrowing government or subdivision thereof.

(2) Specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated.

(3) The amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect.

(4) Whether or not the issuer or its predecessor has, within a period of 20 years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any.

(5) The receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the 2 preceding fiscal years, year by year.

(6) The names and addresses of the underwriters.

(7) The name and address of its authorized agent, if any, in the United States.

(8) The estimated net proceeds to be derived from the sale in the United States of the security to be offered.

(9) The price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation.

(10) All commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set

BRITISH COMPANIES ACT OF 1929—CON.

3. Where any property to be acquired by the company is to be taken on lease, this schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "subpurchaser" included a sublessee.

4. For the purposes of paragraph 8 of part I of this schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or 1 year, part II of this schedule shall have effect as if references to 2 years or 1 year, as the case may be, were substituted for references to 3 years.

6. The expression "financial year" in part II of this schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said part of this schedule be deemed to be a financial year.

COMMENTS—CON.

The British act does not require a prospectus in connection with securities of foreign governments or subdivisions thereof, being limited to companies, and has no provisions corresponding to schedule B of the United States act.

aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated.

(11) The amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges.

(12) The names and addresses of counsel who have passed upon the legality of the issue.

(13) A copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States.

(14) An agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

FULL EXTRACTS FROM THE BRITISH COMPANIES ACT, 1929

PART II—SHARE CAPITAL AND DEBENTURES

Prospectus

34. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the registrar of companies for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding £5 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

35. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in part 1 of the fourth schedule to this act and set out the reports specified in part II of that schedule, and the said parts I and II shall have effect subject to the provisions contained in part III of the said schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided, That this subsection shall not apply if it is shown that the form of application was issued either—

(a) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) In relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding £500.

(4) In the event of noncompliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the noncompliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the noncompliance or contravention arose from an honest mistake of fact on his part; or

(c) the noncompliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided, That in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of part I of the fourth schedule to this act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favor of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this act apart from this section.

36. (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

37. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

(a) every person who is a director of the company at the time of the issue of the prospectus; and

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(iv) that—

(a) as regards every untrue statement not purporting to be made on the authority of any expert, or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and

(c) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports

to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided, That a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report, or valuation as is mentioned in paragraph (iv) (b) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purpose of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

38. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this act it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotments or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 34 of this act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 35 of this act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be alloted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

PART XII. RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE

354.—(1) It shall not be lawful for any person—

(a) to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless—

(i) before the issue, circulation or distribution of the prospectus in Great Britain a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar of companies;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this part of this act; or

(b) to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this part of this act;

Provided, That this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favor of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this act, have been deemed by virtue of section 38 of this act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 37 of this act shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation, or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding £500.

(7) In this and the next following section the expressions "prospectus", "shares", and "debentures" have the same meanings as when used in relation to a company incorporated under this act.

355. (1) In order to comply with this part of this act a prospectus in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of subsection (1) of the last foregoing section must—

(a) contain particulars with respect to the following matters—

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(v) the date on which and the country in which the company was incorporated;

(vi) whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain:

Provided, That the provisions of subparagraphs (i), (ii), (iii), and (iv) of this paragraph shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

(b) Subject to the provisions of this section, state the matters specified in part I of the fourth schedule to this act (other than those specified in paragraph I of the said part I) and set out the reports specified in part II of that schedule subject always to the provisions contained in part III of the said schedule:

Provided, That—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

(ii) in paragraph 3 of part I of the said fourth schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and

(iii) paragraph I of part III of that schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of noncompliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the noncompliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the noncompliance or contravention arose from an honest mistake of fact on his part; or

(c) the noncompliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of

that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided, That in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of part I of the fourth schedule to this act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this act, apart from this section.

356. (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection the expression "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Great Britain, either by such a statement as aforesaid, or by such a prospectus as complies with this part of this act:

Provided, That the provisions of this subsection shall not apply—

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in Great Britain and the offer so states and specifies the stock exchange; or

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters—

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Great Britain where that principal can be served with process;

(b) The date on which and the country in which the company was incorporated and the address of its registered or principal office in Great Britain;

(c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends, and voting;

(d) the dividends, if any, paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in Great Britain or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Great Britain where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes or procures any person to act in contravention of this section, he shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding £200 or to both such imprisonment and fine, and in the case of a second or subsequent offense to imprisonment for a term not exceeding 12 months or to a fine not exceeding £500, or to both such imprisonment and fine.

(6) Where a person convicted of an offense under this section is a company (whether a company within the meaning of this act or not), every director and every officer concerned in the management of the company shall be guilty of the like offense unless he proves that the act constituting the offense took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "shares" means the shares of a company, whether a company within the meaning of this act or not, and includes debentures and units, and the expression "unit" means any rights or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted in England of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void and where it makes any such order may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

Where the court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the high court.

380. (1) In this act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):

* * * * * * *

"Company" means a company formed and registered under this act or an existing company.

"Existing company" means a company formed and registered under the joint stock companies acts, the companies act, 1862, or the companies (consolidation) act, 1908, but does not include a company registered under the said enactments in Northern Ireland or the Irish Free State.

* * * * * * *

"Debenture" includes debenture stock, bonds, and any other securities of a company whether constituting a charge on the assets of the company or not;

"Director" includes any person occupying the position of director by whatever name called;

* * * * * * *

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

* * * * * * *

"The registrar of companies", or, when used in relation to registration of companies, "the registrar", means the registrar or other officer performing under this act the duty of registration of companies in England or Scotland, or in the stannaries, as the case requires;

"Share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied.

FOURTH SCHEDULE

PART I. MATTERS REQUIRED TO BE STATED IN PROSPECTUS

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription, particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:

(a) The purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(d) working capital; and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly

out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a subpurchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the 2 preceding years, or payable, as commission (but not including commission to subunderwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 8 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II. REPORTS TO BE SET OUT IN PROSPECTUS

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said 3 years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus.

PART III. PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

1. The provisions of this schedule with respect to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfillment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "subpurchaser" included a sublessee.

4. For the purposes of paragraph 8 of part I of this schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or 1 year, part II of this schedule shall have effect as if references to 2 years or 1 year, as the case may be, were substituted for references to 3 years.

6. The expression "financial year" in part II of this schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said part of this schedule be deemed to be a financial year.

Mr. KEAN. Mr. President, my amendment was prepared from a photostatic copy of the British companies act, an act which, in my opinion, is far superior to the United States Securities Act of 1933. The United States Securities Act has been found unworkable; it has been found impractical; it has been found to be detrimental to the recovery of business; and it is nothing but a hindrance to business. It has prevented practically any public issues of securities being made. My firm in New York has had public issues of securities offered to it, and I have said that I would not consent to take any issue so long as this statute is on the books.

The British companies act goes further than our act does. There is great complaint about the hawking of securities from house to house by what is called supersalesmanship. That has been a continual menace to the public. When a man dies and leaves his widow an insurance fund from which she receives $5,000 or $10,000, she is immediately besieged by people she never heard of before who try to get the money away from her. Under my amendment it is specified that securities may not be hawked from house to house; that people may not be solicited in their homes to buy securities by persons with whom they have not previously done business.

There are many features of the British companies act which are far superior to our act. The British companies act protects the public in every way, and its provisions have been tried in the courts and proven, while our act has not been tried in the courts, and there are many features of our act which are either detrimental to business or else are impossible of execution.

Therefore, I hope that my amendment will be favorably considered by the Senate. I ask for a vote on the amendment.

Mr. FLETCHER. Mr. President, I merely wish to say that in substance the Securities Act is the British companies act. It is founded on the British companies act. It is practically that act, modified to come within the constitutional power of the legislative authority of the United States with respect to interstate commerce, for instance. In England they have no such question as the difference between intrastate and interstate commerce. Consequently the British companies act does not apply fully in this country. The whole United States act is founded upon the British companies act.

I wish to read from an article by Bernard Flexner entitled "The Fight on the Securities Act", appearing in the Atlantic Monthly of February 1934:

> In substance the Securities Act is the English company's act, modified to come within the constitutional power of the Federal Legislature to regulate interstate commerce and to recognize the fact that in England, except for a very unusual Hatry or Kylsant, the distribution of securities is a decorous, traditional business, offering its wares only to institutions and wary family solicitors, while in the United States it has been a high-pressure racket that jangled every housewife's doorbell.

Mr. President, there is quite a different situation in the United States from the situation existing in England.

Mr. KEAN. That is just the reason, Mr. President, why I am offering my amendment. My amendment absolutely specifies that securities may not be offered to the housewife by people unknown to her.

Mr. FLETCHER. Mr. President, I ask for a vote on the amendment in the nature of a substitute.

Mr. KEAN. Mr. President, before the vote is taken I should like to say further to the Senator from Florida that I have asked unanimous consent to have printed as a part of my remarks an exact comparison of the United States Securities Act of 1933 with the British companies act of 1929.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from New Jersey [Mr. KEAN] in the nature of a substitute for the amendment of the Senator from Florida [Mr. FLETCHER].

The amendment to the amendment was rejected.

The PRESIDING OFFICER. The question now is on the amendment offered by the Senator from Florida [Mr. FLETCHER].

Mr. WALCOTT. Mr. President, I have tried to view this whole question as sanely and as fairly as possible; I have tried to keep my feet on the ground. I have been familiar from the beginning with the investigation of the stock exchange, conducted by the Banking and Currency Committee. I am familiar with business, having been in business for a good part of my life. I am familiar with banking, having practiced banking for many years. I am familiar with the British securities act, having worked under that act for many years. I know its advantages and how fair it is to investors. I am entirely in sympathy with certain of the amendments proposed by the Senator from Florida to the Securities Act, particularly those amendments which define certain terms and then, in my opinion, considerably liberalize the present law known as the "Securities Act of 1933." However, Mr. President, in my opinion, they do not go far enough. The Securities Act, as it exists today, and the bill which we shall very likely pass in a short time, known as the "national stock exchange bill", are companion bills. I hope, if the stock exchange bill shall pass, that the two bills will be administered by the same commission, a commission other than the Federal Trade Commission.

But, Mr. President, we are confronted with a grave situation. After all, unemployment is the great peril, the great problem confronting this country. We are not going to solve it by artificial methods; we are not going to solve it by taxing people to defray the living expenses of those who do not work because they cannot obtain work. Those people must be put to work at normal employment by having a recovery in our business institutions. Our business must prosper before unemployment can very materially be reduced. That will be the test of recovery; that is always the test of society. Society can never succeed unless it can take care, at least with a meager subsistence, of the poorest and lowliest of its members. Otherwise, it breaks down; it falls, leading to riots, and even to revolution and chaos.

The Securities Act of 1933 and the pending bill are, in my opinion, too illiberal. I do not criticize in any way a proper effort to regulate stock exchanges; it seems to me that is an exceedingly useful, and, in fact, necessary undertaking. But the portion of the pending bill affecting business and the treatment accorded securities under the Securities Act are so restrictive as to give a black eye to business. They will keep business from properly financing its requirements.

Those requirements have not been pressing during the last year since the Securities Act was passed; therefore, we have not heard very much about its defects; but from now on, assuming a recovery or even a partial recovery of normal business the Securities Act is going to appear in glaring fashion as a restrictive and almost a paralyzing measure. It will so restrict business that business will not be able to finance its requirements properly. It would be difficult to get the proper personnel on a board of directors today if one were starting a new business, or to hire the proper attorneys, because the restrictions imposed upon the men holding such relations to a corporation are so great.

I hope that many of the amendments proposed by the Senator from Florida will be adopted, and I am sure they will be, as they tend to liberalize the law. I desire, however, to offer some other amendments, and I wish to offer them now for the consideration of the Senate. They have been prepared by a group of business men which is known as the "Association of Durable Industries", who met together to see whether they could not suggest reasonable amendments. I want these amendments to be passed on by this body today, if possible, before a vote is had on the Fletcher amendments, because, in my opinion, they are not only useful but they are necessary. I send the amendments to the desk and offer them now as amendments to the amendment proposed by the Senator from Florida.

The PRESIDING OFFICER. The clerk will state the amendments proposed by the Senator from Connecticut to the amendment offered by the Senator from Florida.

The legislative clerk proceeded to read the amendments submitted by Mr. WALCOTT.

Mr. WALCOTT. Mr. President, may I interrupt the reading for a moment to say that the amendments submitted by me all tend to synchronize our Securities Act to a greater extent with the British securities act than does the Fletcher amendment, and, in addition, propose to furnish such protection to normal legitimate business as is needed. I think the amendments are complicated, and it is difficult to follow them carefully unless one has before him the Securities Act of 1933. I beg the Senate to pay careful attention to the reading of the amendments, because, in my opinion, if they should be ignored or passed by flippantly and without careful consideration, we would do the business of the country a great injury. I ask not only the patience and indulgence of the Senate but careful attention, and even, if necessary, the postponement of final action until Monday or Tuesday of next week, so that the committee may consider the amendments submitted by me.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. WALCOTT. I do.

Mr. BARKLEY. The Senator offers these as amendments to the amendment offered by the Senator from Florida when, as a matter of fact, in some respects, they are intended to be substitutes, are they not, because they conflict in some respects with the amendment which the Senator from Florida has offered and which is now pending?

Mr. WALCOTT. I think they do not conflict in any way. The committee of the Association of Durable Industries, which prepared these amendments, has carefully considered the Fletcher amendment, and approved of the Fletcher amendment, so that the amendments offered by me merely supplement the amendment offered by the Senator from Florida and, in my opinion, clarify it.

Mr. WAGNER. Mr. President, may I ask the Senator whether his amendments have been printed?

Mr. WALCOTT. No; they have not been printed; they are new amendments; and that is why I am asking that careful attention be given to the reading and that time be given for their consideration, for they are complicated, and I doubt whether there is time today adequately to consider them.

Mr. FLETCHER. Mr. President, as the amendments have been presented by the Senator from Connecticut they do not seem to be amendments to the amendment which I have offered; rather they seem to be amendments to the Securities Act, which should, obviously, be presented in the same way as the amendment proposed by the Senator from New Jersey [Mr. KEAN], that is, as a substitute for my amendment. If the Senator has any amendment to the amendment which I have offered, it would be in order, of course, but it should be presented in that way.

Mr. WALCOTT. Mr. President, strictly these are not, in my opinion, amendments to the amendment which is before us at this time, but I should like to have them added to the amendment of the Senator from Florida. In other words, they are amendments to the Securities Act of 1933, and I wish to add them at the end of the amendment now under consideration.

Mr. BARKLEY. Mr. President, if they do not conflict with the amendment of the Senator from Florida but refer to other provisions of the present Securities Act not covered by his amendment, why can we not vote on the amendment of the Senator from Florida, and then let the Senator from Connecticut offer his as independent amendments to the bill and not as amendments to the amendment?

Mr. WALCOTT. I would rather have them considered as amendments to come in at the end of the amendment of the Senator from Florida.

Mr. STEIWER. Mr. President, I merely want to suggest that it would seem that the amendments offered by the

Senator from Connecticut relate to the same identical paragraphs of the Securities Act of 1933 as does the amendment offered by the Senator from Florida. I am not sure that I am correctly advised, but I have here on my desk a copy of the amendments which the Senator from Connecticut just sent to the desk. I suggest that he allow the amendments to be read at this time, so that we may ascertain whether or not we are correct in understanding that they relate to the same provisions of the Securities Act as does the amendment of the Senator from Florida.

The PRESIDING OFFICER. The clerk will proceed with the reading of the amendments offered by the Senator from Connecticut.

The legislative clerk resumed the reading of the amendments submitted by Mr. WALCOTT.

Mr. FESS. Mr. President, may I interrupt the reading to submit an inquiry? I have followed the reading of the clerk, and thus far I have not seen any difference between the amendment being read by the clerk from the amendment offered by the Senator from Florida. Is the clerk reading the wrong amendment? The reading is identical, so far as I have been able to follow it, with the amendment offered by the Senator from Florida.

Mr. BARKLEY. Mr. President, there is one difference I have noted. The word "may" is inserted instead of the word "shall." So far as I can trace it, that is the only difference.

Mr. WALCOTT. Mr. President, I think that is the only difference in the first amendment. It will be found by very careful comparison, however, that there are other slight changes. These are new amendments, and I have not had sufficient time to thoroughly familiarize myself with them. I believe in them all. I believe they would materially help the bill. I want them considered, and I prefer that we be given more time to consider them in some way by referring the entire matter of amendment of the Securities Act to the committee or a subcommittee, or at least take a day or two longer to consider them on the floor of the Senate. It is most important and vital to the recovery of business.

The Senator from Ohio, I think, has not followed the reading closely, because there is a change of one or two words as compared with the Fletcher amendment. Therefore my amendment could fairly be construed as a substitute.

Mr. FESS. That is the reason why I rose. If there is any difference whatever, then it should be offered as a substitute.

Mr. ROBINSON of Arkansas. Mr. President, may I ask the Senator from Connecticut a question?

Mr. WALCOTT. Certainly.

Mr. ROBINSON of Arkansas. If the difference between the amendment proposed by the Senator from Connecticut and the amendment offered by the Senator from Florida consists in only a few words, may I ask why he does not offer to amend the amendment of the Senator from Florida, which process would point out and make clear to the Senate the changes he proposes? It seems to me that would be the more simple procedure.

Mr. WALCOTT. I expect to do that. While that is true of the first amendment, which merely changes one word, it is not true of some of the others.

Mr. ROBINSON of Arkansas. Of course we are only considering one amendment at a time.

Mr. BARKLEY. No; it is all one amendment.

Mr. ROBINSON of Arkansas. Very well.

Mr. FESS. That answers my question. I thought the clerk might be reading the wrong amendment. If there are other changes further on, that will become apparent as the reading proceeds.

The PRESIDING OFFICER. The Chair will state that the Parliamentarian advises that the amendment should be considered as an amendment in the nature of a substitute.

Mr. FLETCHER. I think there is no doubt about that. I think that is the proper way to consider it.

Allow me to say to the Senator that there is not much difference, as he suggests; only a difference of a word or two here and there. The whole matter has to go to conference if our plans are followed. If we shall agree to my amendment, the Senator's suggestions and the proposal as read and placed in the RECORD will all be considered by the conferees, and we can adjust the matter in conference.

Mr. WALCOTT. Mr. President, I feel so strongly about the whole matter and I deem it so vital to our recovery program that the Securities Act of 1933 be further liberalized, and liberalized to a greater extent than is proposed by the amendment of the Senator from Florida, that I am unwilling to trust the conferees with the complete liberalization of it until we have thoroughly considered the whole matter in the Senate. Therefore I feel that I should insist upon having the amendment read and placed before and considered by the Senate.

The PRESIDING OFFICER. The amendments will be considered as an amendment in the form of a substitute for the amendment of the Senator from Florida. The clerk will continue the reading of the proposed substitute.

The legislative clerk resumed and concluded the reading of the amendment submitted by Mr. WALCOTT in the nature of a substitute for Mr. FLETCHER's amendment, as follows:

On page 57, after line 9, insert the following:

"TITLE II. AMENDMENTS TO SECURITIES ACT OF 1933

"SEC. 201. (a) That paragraph (1) of section 2 of the Securities Act of 1933 is amended to read as follows:

"'The term "security" means any note, stock, Treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or interest commonly known as a "security", or any certificate of interest or participation temporary or interim certificate for, receipt for, or warrant or right to subscribe or to purchase any of the foregoing.'

"(b) Paragraph (4) of such section 2 is amended to read as follows:

"'(4) The term "issuer" means every person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), or of the fixed, restricted management or unit type, the term "issuer" means the person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.'

"(c) Paragraph (10) of such section 2 is to be amended to read as follows:

"'(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio, which offers any security for sale; except that (a) a communication shall not be deemed a prospectus if prior to or at the same time with such communication a written prospectus meeting the requirements of section 10 was sent, mailed, or given to the person to whom the communication was made by the person making such communication or his principal, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if (1) it states from whom a written prospectus meeting the requirements of section 10 may be obtained and in addition does no more than (1) identify the security and state the price thereof, and (2) state by whom subscriptions will be received or orders executed or similar information.'

"(d) Paragraph (11) of such section 2 is amended to read as follows:

"'(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking. A person shall not be deemed an underwriter by reason of (a) the receipt of a commission from an underwriter or dealer not in excess of the usual and customary distributors' commission, or (b) the purchase of a security from an underwriter or dealer at a concession or discount from the price at which the security is offered to the public which is not in excess of the usual and customary distributors' commission, or (c) making an actual underwriting agreement with an issuer or underwriter or participating therein or receiving compensation therefor or purchasing, pursuant to such agreement, all or any part of such security, provided such person does not dispose of the security so purchased until more than 6 months after he shall have made payment in

full for such security, or (d) performing the duties of a fiscal agent, depositary, transfer agent, or registrar, or duties of a similar nature, and receiving compensation therefor, or (e) recommending the purchase, sale, or exchange of a security, provided that any compensation which such person receives for making such recommendation from an issuer, underwriter, or dealer shall be fully disclosed. As used in this paragraph, the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.'

"(e) Paragraph (12) of such section 2 is amended to read as follows:

"'(12) The term "dealer" means any person engaged in the business of buying and selling securities, as agent, broker, or principal, but does not include any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business of distributing securities.'

"(f) Such section 2 is further amended by inserting after paragraph (12) three new paragraphs:

"'(13) An "untrue statement of a material fact" shall mean (a) a statement which is untrue of itself, or (b) a statement which though literally true is incomplete by reason of the omission of a material fact and which is misleading by reason of such omission; and (2) a material fact shall mean a fact which, if truthfully stated at the time the untrue statement was made, would have materially adversely affected the market value of the security with respect to which the statement was made.

"'(14) The terms "public offering", "new offering", "distribution", or "offered to the public" mean any offering of any security for sale to persons other than holders of securities of the issuer, or employees of the issuer, or banks, trust companies, insurance companies, or investment trusts and made by means of one or more advertisements in a newspaper of general circulation or by means of a general distribution of a prospectus, or by means of solicitation by retail salesmen. These terms shall in no event include an offering to 100 persons or less.

"'(15) The term "control", if exercised through stock ownership, shall mean the ownership by the controlling person of stock of the controlled person at the time entitled to a number of votes for the election of directors equal to or greater than 51 percent of the votes cast for such purpose at the last preceding annual meeting of the controlled person.'

"SEC. 202. (a) Paragraph (2) of section 3 (a) of such act is amended to read as follows:

"'(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by one acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States, or any certificate of deposit for any of the foregoing, or any security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is supervised by the State or Territorial banking commission or similar official; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank';

"(b) Paragraph (3) of such section 3 (a) is amended by striking out 'which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and.'

"(c) Such section 3 (a) is further amended by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon, and by inserting immedately after such paragraph (8) the following new paragraphs:

"'(9) Any security of a person exclusively exchanged by it with, or issued by it to, the security holders or creditors of such person or of any person directly or indirectly controlled by it, or any security of a person, which is a party to a reorganization (including any merger or consolidation), exclusively exchanged by it with, or issued by it to, the security holders or creditors of such person and of any other persons which are parties to such reorganization, provided that any commission or other remuneration paid or given for soliciting such exchange or the acceptance of such issue shall be disclosed; or any security issued pursuant to a plan of reorganization or readjustment of, or a composition by, or in payment for assets of a person which is, or involving any properties which are, (a) in receivership, bankruptcy, or foreclosure, or (b) in process of reorganization, readjustment, rehabilitation, or liquidation in or pursuant to judicial proceedings or by State officials pursuant to law, including certificates of deposit issued by any committee or depositary representing the securities of or claims against any such person (but not including securities which are sold for cash and have not been or are not to be offered in exchange or for subscription to security holders or creditors of such person); or any security issued pursuant to a plan of reorganization or readjustment bona fide announced prior to July 27, 1933.

"'(10) Any security which is a part of an issue sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or if a corporation, incorporated and doing business within, such State or Territory.

"'(d) Section 3 (b) is amended by striking out "but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $100,000." and substituting therefor "or for any other reason.'"

"SEC. 203 (a) Paragraph 1 of section 4 of such act is amended to read as follows:

"'(1) Transactions by any person other than issuer, underwriter, or dealer; transactions by an issuer not involving any public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter acting as such.'

"(b) Paragraph (3) of such section 4 is hereby repealed.

"SEC. 204. Subsection (c) of section 5 of such act is hereby repealed.

"SEC. 205. Section 7 of such act is amended by striking out the last sentence and by amending the first sentence to read as follows:

"'SEC. 7. The registration statement, when relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information, and be accompanied by the documents specified in schedule A; and when relating to a security issued by a foreign government or political subdivision thereof, shall contain the information and be accompanied by the documents specified in schedule B; except that to facilitate the operation of the provisions of this act and to the end that the issuance of securities may not be made unduly costly, the Commission is authorized, in its discretion, to waive and dispense with the filing with it by any applicant for the registration of securities of any papers, documents, data, and/or information which in its judgment may be unnecessary in compliance with the purpose and spirit of this act, including any papers, documents, data, or information required by schedule A or schedule B hereof.'

"SEC. 206. (a) Paragraph (1) of section 10 (a) of such act is amended to read as follows:

"'(a) A prospectus—

"'(1) when relating to a security other than a security issued by a foreign government or political subdivision thereof shall contain the same statements made in the registration statement, but it need not include the documents referred to in paragraphs (24) to (27), inclusive, of schedule A;'

"(b) Subsection (b) of section 10 of such act is amended to read as follows:

"'(b) Notwithstanding the provisions of subsection (a)—

"'(1) when a prospectus is used more than 13 months after the effective date of the registration statement, the information in the statements contained therein shall be as of a date not more than 12 months prior to such use, so far as such information is known to the user of such prospectus;

"'(2) there may be omitted from any prospectus any of the statements required under such subsection (a) which the commission may designate as not being necessary for the protection of investors, and any of the statements required under such subsection (a) may be included in the prospectus in summarized form, unless the commission shall determine that it is necessary for the protection of investors to include such statement in full.'

"SEC. 207. (a) The first paragraph of section 11 (a) is amended (1) by striking out 'or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading,' and (2) by striking out 'acquiring' and inserting in lieu thereof 'who, in reliance on such registration statement or on a prospectus which complied with section 10 and contained such untrue statement, acquires', and (3) by striking out 'or omission.'

"(b) Paragraph (4) of such section 11 (a) is amended by striking out 'with respect to the statement in such registration statement' and inserting in lieu thereof 'if the untrue statement is contained in the part of the registration statement, or in any.'

"(c) Paragraph (5) of such section 11 (a) is amended to read as follows:

"'(5) Every underwriter with respect to such security, if such person purchased such security from an underwriter or dealer participating in the distribution.'

"(d) The first paragraph of subsection (b) of such section 11 is amended by striking out 'other than' and inserting in lieu thereof 'including', and clauses (A) and (B) of such subsection (b) are amended by striking out in each of such clauses 'after reasonable investigation' and by striking out in each of such clauses 'and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading'; and clauses (C) and (D) of such subsection (b) are amended to read as follows: '(C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself) such part was made by an expert selected after the reasonable investigation and with reasonable ground for belief in his ability for such purpose, and he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not

believe at the time such part of the registration statement became effective that the statements therein were untrue or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.'

"(e) Subsection (c) of such section 11 is amended to read as follows:

"'(c) In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.'

"(f) Subsections (e), (f), and (g) of such section 11 are hereby amended to read as follows:

"'(e) For the purpose of subparagraphs (A) and (B) of paragraph 3 of subsection (c) of this section, an officer, director, underwriter, or expert shall be deemed to have reasonable ground to believe any statement, if such statement is made by any officer (other than himself) or employee of the issuer or of any person controlling or controlled by or under common control with the issuer, who he believes is competent to make such statement; and for all purposes of paragraph 3 of subsection (c) of this section, any underwriter (other than the one having the largest interest in the aggregate profit or compensation, or if no one underwriter has the largest interest, then other than the several underwriters who each have the largest interests), shall be deemed to have exercised reasonable care, or to have reasonable ground to believe, if he reasonably believes the underwriter or any one of the underwriters having the largest interest as aforesaid has exercised reasonable care, or has reasonable ground to believe; any any issuer shall be deemed to have exercised reasonable care, to have reasonable ground to believe, and to believe the truth of a statement if an officer of the issuer or any person controlling, controlled by or under common control with the issuer, exercised reasonable care, had reasonable ground to believe and did believe in the truth of the statement in question.

"'(f) All or any one or more of the persons specified in subsection (a) shall be jointly and severally liable, and every person, other than an issuer who becomes liable to make any payment under this section may recover contribution as in the cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation, and any such person may recover the entire amount of such payment, whether made directly or as contribution, from the issuer, unless such person was guilty of fraudulent misrepresentation: *Provided*, That the aggregate amount recoverable by any person under this paragraph as contribution and from the issuer shall not exceed the aggregate amount of the payment made by him.

"'(g) The suit authorized under subsection (a) shall be for the damage caused by the untrue statement and such damages shall in no event exceed the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought. In no event shall an underwriter be liable in any suit or as a consequence of suits authorized under subsection (a) for damages in excess of the total price at which the securities underwritten by him were offered to the public, in any suit under this or any other section of this title the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.'

"SEC. 208. Section 12 of such act is hereby amended to read as follows:

"'SEC. 12. (1) Any person who willfully sells a security in violation of section 5 shall be liable to the person purchasing such security from him.

"'(2) Any person who sells for his own account (or, if acting as agent, fails to disclose that he is not acting for his own account) a security (whether or not exempted by the provisions of section 3, other than paragraph (2) of subsection (2) thereof) by the use of any means or instruments of transportation in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact, and who knows or in the exercise of reasonable care should have known that such statement was untrue, shall be liable to the person purchasing such security from him if such purchaser relied on such untrue statement and did not know or in the exercise of reasonable care would not have known that such statement was untrue. If an untrue statement made by a seller is contained in a prospectus which complies with section 10 or in a registration statement, the seller shall be deemed to have exercised reasonable care in relying upon such prospectus or registration statement without further investigation provided such seller is not a person described in section 11 (a).

"'(3) The suits authorized under subsections (1) and (2) may be either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages caused by such violation or untruth, if the purchaser no longer owns the security. Such damages shall not be more than the excess of the amount paid by the person suing over the amount received by the person suing.'

"SEC. 209. Section 13 of such act is amended (a) by striking out '2 years' wherever it appears therein and inserting in lieu thereof '1 year'; (b) by striking out '10 years' and inserting in lieu thereof '5 years'; and (c) by inserting immediately before the period at the end thereof a comma and the following: 'or under section 12 (2) more than 5 years after the sale.'

"SEC. 210. Section 15 of such act is hereby amended to read as follows:

"'SEC. 15. Every person who, by or through stock ownership, or agency or who, pursuant to an agreement with one or more other persons by or through stock ownership, or agency, controls any person and who for the purpose of evading liability under section 11 or section 12 causes such controlled person to take any action which renders such controlled person liable under section 11 or section 12 shall be subject to liability under section 11 and section 12 to the same extent as if such controlling person had taken such action directly.'

"SEC. 211. (a) The first paragraph of section 17 (a) of such act is amended by adding at the end thereof 'willfully and with intent to deceive.'

"(b) Paragraph (2) of such section 17 (a) is amended by striking out 'or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

"(c) Section 17 (b) is amended to read as follows:

"'(b) It shall be unlawful for any person by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service, or communication which does not offer a security for sale but describes such security in such a manner as to indicate that such person is acting in a disinterested capacity if in fact such person has or will receive consideration directly or indirectly for such services.'

"SEC. 212. Section 19 (a) of such act is amended to read as follows:

"'(a) The Commission shall have authority from time to time to make, amend, and rescind rules and regulations defining terms deemed by the Commission to be accounting, technical, and trade terms used in this title. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. Acts done or omitted in good faith in compliance with the rules and regulations of the Commission authorized by this title shall be deemed, for the purpose of determining any and all liability under this title, to be in compliance with its provisions, notwithstanding the fact that such rules and regulations may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to have been made by the Commission in excess of, or contrary to, the authority conferred upon it by the provisions of this title.'

"SEC. 213. Section 22 of such act is amended by inserting before the word 'jurisdiction' the word 'exclusive' and by striking out 'concurrent with State and Territorial courts.'

"SEC. 214. Section 24 of such act is amended to read as follows:

"'SEC. 24. Any person who willfully violates any of the provisions of this title, or any person who, in a registration statement filed under this title, willfully makes any untrue statement of a material fact, shall upon conviction be fined not more than $5,000 or imprisoned not more than 1 year, or both.'

"SEC. 215. (a) Paragraphs (4) and (5) of schedule A of title I of such act are amended to read as follows:

"'(4) The names and addresses of the directors or persons performing similar functions, and the chief executive, financial, and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; and of all partners, if the issuer be a partnership.

"'(5) The names and addresses of the underwriters contracting directly with the issuer.'

"(b) Paragraph (6) of such schedule A is repealed.

"(c) Paragraph (7) of such schedule A is amended to read as follows:

"'(6) The amount of securities of the issuer held of record by any person specified in paragraphs (4) and (5) of this schedule, as of a date within 20 days prior to the filing of the registration statement, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe.'

"(d) Paragraph (10) of such schedule A is amended to read as follows:

"'(9) A statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted by the issuer or an underwriter specified in paragraph (5) more than 10 percent in the aggregate of such options.'

"(e) Paragraph (13) of such schedule A is amended to read as follows:

"'(12) The general purposes and the estimated amounts to be devoted to such purposes, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources the amounts thereof and the sources thereof shall be stated.'

"(f) Paragraph (14) of such schedule A is repealed.

"(g) Paragraphs (17) and (18) of such schedule A are amended to read as follows:

"'(15) The aggregate amount of all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer.

"'(16) The aggregate amount or estimated amount of expenses, other than commissions specified in paragraph (15) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges.'

"(h) Paragraphs (19) and (20) of such schedule A are repealed.

"(i) Paragraph (22) of such schedule A is amended to read as follows:

"'(18) Full particulars of the nature and extent of the interest, if any, of every director or principal executive officer, in any property to be acquired, not in the ordinary course of business of the issuer, out of the proceeds of the security.'

"(j) Paragraphs (24), (25), (26), (27), and (28) of such schedule A are amended to read as follows:

"'(20) Dates of and parties to, and a brief description of any contract to be performed in whole or in part after the filing of the registration statement, or made not more than 2 years before such filing which (1) provides for special bonuses or profit-sharing arrangements for the officers or directors or (2) is made by or with a public utility company or an affiliate thereof, and provides for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of $2,500 per year in cash or securities or anything else of value).

"'(21) A balance sheet prepared in accordance with any generally accepted accounting practice as of a date not more than 90 days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature (and cost thereof if acquired within 5 years), including any loan in excess of $20,000 to any officer, director, stockholder, or person directly or indirectly controlled by the issuer, or person under direct or indirect common control with the issuer, and all the liabilities of the issuer, including surplus of the issuer showing how and from what sources such surplus was created. If such balance sheet be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than 1 year prior to the filing of the registration statement shall be submitted.

"'(22) A profit and loss statement, prepared in accordance with any generally accepted accounting practice of the issuer, showing earnings and income, the nature and source thereof, and the expenses and fixed charges for the latest fiscal year for which such statement is available and for the 2 preceding fiscal years, year by year, or if such issuer has been in actual business for less than 3 years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than 6 months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the 3 years or lesser period as to the character of the charges, dividends, or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant.

"'(23) If the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit-and-loss statement of such business, certified by an independent public or certified accountant, meeting the requirements of paragraph (22) of this schedule, for the 3 preceding fiscal years, together with a balance sheet, similarly certified, or such business, meeting the requirements of paragraph (21) of this schedule of a date not more than 90 days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than 90 days prior to the filing of the registration statement.

"'(24) A copy of any agreement or agreements (or, if identic agreements are used, the forms thereof) made by the issuer with the underwriter, including all contracts and agreements referred to in paragraph (15) of this schedule.'

"(k) The last unnumbered paragraph of such schedule A is amended to read as follows:

"'In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trust, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with information of like character about the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.'

"(l) Paragraphs (8), (9), (11), (12), (16), (21), (23), (29), (30), (31), and (32) are hereby respectively renumbered (7), (8), (10), (11), (14), (17), (19), (25), (26), (27), and (28).

"SEC. 216. Upon the expiration of 90 days after the date upon which a majority of the members of the Federal Securities Exchange Commission appointed under section 4 of title I of this act have qualified and taken office, all powers, duties, and functions of the Federal Trade Commission under the Securities Act of 1933 shall be transferred to such Commission, together with all property, books, records, and unexpended balances of appropriations used by or available to the Federal Trade Commission for carrying out its functions under the Securities Act of 1933.

"On page 1, after line 2, insert:

"TITLE I. REGULATION OF SECURITIES EXCHANGES

"In sections 2 to 30, both inclusive, of the bill, except in section 7 (d), strike out the word 'act' wherever it appears and insert in lieu thereof the word 'title.'"

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Connecticut [Mr. WALCOTT] in the nature of a substitute for the amendment of the Senator from Florida [Mr. FLETCHER].

Mr. WALCOTT. Mr. President, I do not want a vote on this amendment today. I have a right to ask for a division of the amendment by subjects. I do not want a record vote on any part of it. I desire to save time. I desire to have this measure move along as rapidly as possible, but I do want these suggestions preserved in connection with the bill, and I want them to go to conference with the sympathetic consideration of the conferees. I do not know who the conferees are going to be. The subject, I know, is a complicated one. These are complicated measures; and it may be wiser to stop here, with the reading of the amendment.

Mr. STEIWER. Mr. President, will the Senator yield?

Mr. WALCOTT. I yield.

Mr. STEIWER. I am not sure that I understand the full force and effect of all the amendments embodied in this substitute. Like other Senators I have had but little opportunity to make comparisons. Apparently, the amendment offered by the Senator from Connecticut deals with the same sections of the Securities Act as the amendment offered by the Senator from Florida; but the proposals made by the Senator from Connecticut are more extensive and liberalize the act to a greater degree than the amendments offered by the Senator from Florida.

Mr. WALCOTT. That is correct.

Mr. STEIWER. The result is, if I am right in that statement, that if the Senate should agree to the amendments offered by the Senator from Florida, and the bill should go to conference with those amendments in it, the more liberal proposals suggested by the Senator from Connecticut would not be in conference. There would be no way for the conferees to consider them, either sympathetically or otherwise. If, therefore, the Senator from Connecticut earnestly desires his amendments to be considered, they must be considered here and now, else they will be entirely done away with and will receive no consideration.

Mr. BARKLEY. Mr. President, if the Senator from Connecticut will yield, the Senator from Oregon may not be correct about that. The House bill has nothing at all in it with reference to the Securities Act. If the amendments of the Senator from Florida should be adopted, that action would throw open to conference all the sections touched by his amendments, and the conferees would be free to consider the suggestions offered by the Senator from Connecticut; but if the suggestions of the Senator from Connecticut should be voted down in the Senate, the conferees would feel more or less bound by that result, and, in my judgment, they would not have the freedom to consider them which they otherwise would have.

Mr. STEIWER. I think the Senator's last suggestion is correct. I am entirely in accord with it.

Mr. FESS. Mr. President, will the Senator yield to me?

Mr. BARKLEY. The Senator from Connecticut has the floor.

Mr. WALCOTT. I yield to the Senator from Ohio.

Mr. FESS. Is the Senator from Kentucky clear that the committee of conference would be empowered to enlarge on the amendment that goes from this body? The amendment offered by the Senator from Connecticut is broader than the one offered by the Senator from Florida. Would the conferees have it within their power to add to the amendment offered by the Senator from Florida?

Mr. BARKLEY. I think undoubtedly so, for the reason that where the Senate strikes out all the language of a House bill and inserts practically a new bill, even where there is in the Senate amendment language which is identical with that in the House bill, it has frequently occurred that the conferees have had almost carte blanche in writing a section or a proposal.

I recall that in the consideration of the Transportation Act of 1920, when the House passed the bill and the Senate struck out all the language of the bill as it passed the House and inserted the Cummins Act, it went to conference and the conferees rewrote the entire Transportation Act, as far as both Houses were concerned, and that was accepted as a proper exercise of the functions of the conferees.

Mr. CLARK rose.

Mr. FESS. Mr. President, I should be glad to hear the opinion of the Senator from Missouri in regard to the question.

Mr. CLARK. Mr. President, similar procedure was followed in the consideration of the Federal Reserve Act. The House passed a bill and the Senate struck out all after the enacting clause and inserted its own bill. While many sections were identical, it was ruled in the House, when the conferees reported, that the Senate having struck out all after the enacting clause, the whole subject was in conference, and the conferees had carte blanche to write any section they pleased.

Mr. FESS. So the opinion of the Senator from Missouri is that the conferees could consider the amendment of the Senator from Connecticut?

Mr. CLARK. I am very clearly of that opinion.

Mr. DILL. The same thing happened in connection with the framing of the Radio Act.

Mr. BARKLEY. Mr. President, the Senator from Connecticut would be in much better position in conference than if the amendment were voted down, for while the conferees could still consider the proposal which had been voted down by the Senate, they would not feel as free to do so as if there had been no adverse action on the amendment taken by the Senate. They would be somewhat bound by the action of the Senate in rejecting the amendment. The action of the Senate would be more or less in the nature of an instruction to the conferees.

Mr. FLETCHER. Mr. President, the situation is this: When the Senate amends a House bill, the amendment goes to conference, the whole of it, if the House does not accept the amendment of the Senate. The question before the conferees is, then, Will the Senate recede from the amendment, or will the House recede from its dissent? The House can either accept the Senate amendment in toto or it can accept it with an amendment, and that would be the procedure in this case. The House, we hope, would recede from its disagreement with such amendments as might be recommended, and the result would go into the report of the conferees. The House need not take the whole thing or nothing. It can recede with an amendment.

Mr. FESS. Mr. President, if the Senator will permit, I am aware of that, but my question was whether the conferees could enlarge upon an amendment that was adopted in the Senate. That was the only point I made.

Mr. BARKLEY. Where the Senate strikes out all the language of a bill and inserts entirely new language, the sky is almost the limit in the writing of the measure.

Mr. WALCOTT. Mr. President, I want to be perfectly frank about this matter. There is not the slightest partisan feeling in my mind about it. All I am trying to do is to have some action to protect the business interests of this country by liberalizing the Securities Act, which does not protect business but injures business very seriously.

We are facing here a practical issue. I want the suggestions contained in my proposed substitute, which I know are sound, because I have studied them carefully, to have the consideration of the conferees. How can we best accomplish that end? I can see that the worst thing we could do would be to have the amendments now voted down by this body. Is there any way by which the amendments can be accepted by the Senate for the consideration of the conferees? That is all I want to accomplish, because there is no time for anything else. May I ask the Senator from Florida to consider that point? I know he seeks the same result at which I aim. He wants to modify the Securities Act in order to make it safe, and I am satisfied that these suggestions would help toward that end. The Senator from Florida has had no opportunity to study them; he does not know what they embrace, and other Senators do not. There has been no time to study them. They have just come in.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. WALCOTT. I yield.

Mr. BARKLEY. The committee considered this whole subject; it has been under consideration and under discussion for months.

Mr. WALCOTT. That is true.

Mr. BARKLEY. I would not, of course, suggest that the Senator did not offer the amendment as soon as he had it prepared, but all other amendments were offered here days ago, and printed, so that Senators could study them. The Senator comes in today with a typewritten amendment and asks that the bill go over until next week in order that Senators may study the amendment. Was there any insurmountable difficulty in the way of offering these amendments some time ago so they could have been studied?

Mr. WALCOTT. The amendments have been changed from time to time. I saw the amendments in this form possibly only 3 days ago. They have been radically modified since then. There was a good deal in them with which I did not agree, and I spent all yesterday afternoon going over them, and the hearing granted to this particular group, the Durable Industries Association, was allowed only last Tuesday; I think either Tuesday or Wednesday. There has not been much time; it has been very hurried, I admit. It is very complicated, and I am not trying to hasten the deliberations of the Senate. I should like to get the amendments before the conferees if we cannot get a favorable vote on them today.

Mr. BARKLEY. They undoubtedly will be before the conferees, regardless of the action taken here.

Mr. WALCOTT. I do not think there is a very good chance of them being before the conferees, unless that can be accomplished in a parliamentary way.

Mr. FESS. Mr. President, will the Senator yield?

Mr. WALCOTT. I yield.

Mr. FESS. In the light of the question raised a while ago, would it be proper for the Senator from Connecticut to appear before the conference committee to present these amendments? His point is, how are we to get them before the conference committee in a parliamentary way?

Mr. McNARY. Mr. President, will the Senator from Connecticut yield to me?

Mr. WALCOTT. I yield.

Mr. McNARY. I was attracted by the inquiry addressed by the Senator from Ohio to the Senator from Florida. The parliamentary situation is not complicated. If the Senator from Connecticut would not offer the amendments as a substitute, but would offer them as one amendment, to be inserted at the end of the last section of the Fletcher proposal, and it should be agreed to, the whole subject matter would go to conference, having been treated by the Senate, and there having been no action by the House. The conferees then could write, out of both the measures, that

which would meet the situation. The amendments should not be offered as a substitute, but as one amendment.

Mr. BARKLEY. The difficulty about that is that some of the provisions of the Senator's amendment are utterly in conflict with the amendment of the Senator from Florida.

Mr. McNARY. That is true.

Mr. BARKLEY. And it would put the Senate in a rather ridiculous position to adopt amendments which were contradictory within themselves.

Mr. McNARY. But that in no fashion militates against the proposal I have made. It would be the duty of the conferees to strike out all conflicting provisions, and to bring in a logical substitute for the two proposals.

Mr. FLETCHER. Mr. President, I cannot consent to these amendments at all. I have not had time to examine them fully. I know something of their source and origin and have had some discussion about the views of their proponents. I cannot consent to do what is suggested, though I am willing to consider the matter.

In answer to the question of the Senator from Ohio, I think the conferees have the right to allow a Senator to appear before them and to present such matters as he may wish to present. It is my understanding that they have a right to do that.

This matter can be considered in conference, and I think much better results could be secured in that way than by now having a vote on it. We are asked to go too far. As the Senator from Kentucky has said, some of these suggestions are in absolute conflict with the proposal which I have made. I think some of them go too far.

Mr. McNARY. Mr. President, there would be no parliamentary limitations or inhibitions against the proposal I suggest. It would be the duty of the conferees to take both of these amendments and work out something to meet the situation. If the Senator from Florida says he will not agree to it, that is the end of my proposal. It should be done, in fairness to the Senator.

Mr. FLETCHER. We can consider these questions without adopting the amendments.

Mr. McNARY. Mr. President, unless there shall have been action by the Senate, when the conferees meet, they will not consider any voluntary proposal by a Senator. He would not have any standing in conference at all. If I were a conferee I would not have a Senator come before me with a proposal unless it had theretofore had Senate action. The Senator knows that if the Senator from Connecticut should go before the conferees with a mere proposal which had never had the sanction of the Senate, it would not receive careful and due consideration.

Mr. FLETCHER. That is an assumption with which I do not agree.

Mr. BARKLEY. Does the Senator think it would receive as much consideration at the hands of the conferees if the Senate had acted on it and voted it down as if the Senate had not voted on it at all?

Mr. HASTINGS. That is not the proposal of the Senator from Oregon.

Mr. BARKLEY. The Senator's proposal is that we accept these amendments. That is an impossibility.

Mr. McNARY. There is no impossibility from the standpoint of the Senate rules or procedure. I say that the amendments should not be offered as a substitute, but as an amendment at the conclusion of the amendment offered by the Senator from Florida, taken to conference, where the conferees would have the whole subject matter before them, and something could be drafted that would not be inconsistent. The parts of the amendment which were inconsistent would be harmonized, and there would be brought back the compromise agreed upon by the conferees.

The PRESIDING OFFICER. The time of the Senator from Connecticut has expired.

Mr. VANDENBERG. Mr. President, I should like to offer a suggestion which, it seems to me, is practical, and which would reach the objective which we all have in mind.

The Senator from Connecticut does not want to leave this suggestion in a purely nebulous status, with no Senate credentials whatever behind these proposals when the bill shall reach conference. He apparently is perfectly willing to leave the consideration to the conference, if he can be assured of an acknowledged status.

What would be the objection—and I am addressing myself to the Senator from Florida [Mr. FLETCHER] and the Senator from Kentucky [Mr. BARKLEY]—to a unanimous-consent request that when the conference shall meet it consider the suggestions submitted in the amendments by the Senator from Connecticut in whatever respect they bear upon the problems of the conference? Such a request has no conclusive authority behind it, and yet it does not leave the Senator from Connecticut wholly without some acknowledgment of his right to be heard.

May I ask the Senators whether there would be any objection to taking that course?

Mr. FLETCHER. I have no objection, so far as I am concerned, to such action by the Senate. Of course, it will not bind the House.

Mr. VANDENBERG. Certainly not. Would that comply with the wishes of the Senator from Connecticut?

Mr. WALCOTT. Yes; I think it would. Of course, I do not want these suggestions smirched by an antagonistic vote. I do want them to be considered seriously by the conferees, because I believe they will find in them a great deal that is valuable, and that they will be of help to the conferees.

Mr. FLETCHER. I have no objection to such a suggestion as the Senator from Michigan makes.

Mr. CLARK. Mr. President, will the Senator from Michigan yield?

Mr. VANDENBERG. I yield.

Mr. CLARK. My understanding is that the Senator from Michigan was making a request for unanimous consent.

Mr. VANDENBERG. I was suggesting such a request to see whether satisfactory results could be achieved under it.

Mr. CLARK. If the Senator will further yield, I will say that I have an amendment which I had decided not to offer, but I am perfectly willing to submit the amendment to the conferees; and if the Senate will agree to the request of the Senator from Michigan that the amendments of the Senator from Connecticut be submitted to and considered by the conferees, I desire to have my amendment included in the unanimous-consent request.

My amendment is, on page 9, after line 15, to insert the following new section:

SEC. —. Section 12 (2) of such act is amended by inserting, after the words "The purchaser not knowing of such untruth or omission" and before the parenthesis, the following: "(a) and relying upon such prospectus or oral communication or statement included therein."

Mr. VANDENBERG. I ask unanimous consent that both the proposed amendments submitted by the Senator from Connecticut and the proposed amendment submitted by the Senator from Missouri shall be referred to the conferees, with the request that they be considered by the conferees.

Mr. CONNALLY. Mr. President, reserving the right to object, is this not rather an innovation in parliamentary procedure?

Mr. VANDENBERG. Very decidedly so; but we live in an age of innovation, Mr. President.

Mr. CONNALLY. The Senator is an innovator, I will admit. How can the Senate bind the conferees?

Mr. VANDENBERG. The Senate is binding no one.

Mr. CONNALLY. It seems to me this procedure will be introducing a rather troublesome precedent for the future.

Mr. CLARK. Mr. President, if the Senator will further yield, I will state that I understand the Senator's request does not contemplate that it is in any sense to be an attempt to bind the conferees.

Mr. VANDENBERG. Not at all.

Mr. CLARK. It would be simply an expression on the part of the Senate that these are matters which may be subject to consideration by the conferees.

Mr. CONNALLY. That does not bind anyone, either. It seems to me it is a bad precedent to set. The rule with

regard to conference action is well established. If the Senator desires these matters to go to conference, the way to get them there is to adopt the amendments and let them go. I think it is a dangerous thing to undertake a procedure of this kind. Another body sits at the other end of the Capitol. That body can indulge in the same sort of procedure; and the result may be that time and time again, in order to accommodate Senators or Representatives, such a procedure as the one now suggested will be indulged in for the purpose of having a record made with respect to proposed legislation, the adoption of which the Member cannot secure, with the result that all the time spent in conference may be taken up with such questions.

Mr. VANDENBERG. Mr. President, has the Senator from Texas been on the floor during the last half hour, while this discussion has taken place?

Mr. CONNALLY. The Senator from Texas has been on the floor only a short time. The Senator came in while the Senator from Michigan was discussing the matter.

Mr. VANDENBERG. Then, the Senator from Texas is uninformed with respect to the efforts which have been made during the last 30 minutes to find a way whereby we shall not be foreclosed from having in the conference a complete survey of all the various phases of the Securities Act of 1933. The sole purpose of this suggestion is to conclude the matter promptly and effectively without foreclosing anyone.

Mr. CONNALLY. The Senator from Texas is more concerned with legislating according to some well-established rule, and legislating by the Senate itself, rather than by the conference committee. I do not believe the conference committee ought to be the legislative branch of the Government. I shall not object, but I want my own observations with regard to a practice of this sort to appear in the RECORD.

Mr. BARKLEY. Mr. President, of course it is well known in the Senate, and has been all along, that when matters go to conference any Senator who has a suggestion to bring to the attention of the conferees is accorded the right to do so. The conferees could invite the Senator from Connecticut, or the Senator from Missouri, or any other Senator who desires to present to them a matter that is within their jurisdiction, to come before them, or the Senator could ask to be allowed to do so. We do that all the time. When conferees are considering a measure we always feel free to go to any conferee, or to all of them together, or separately, and make suggestions.

The unanimous-consent suggestion of the Senator from Michigan is irregular. It does not bind anyone. It does not bind the conferees, except to consider the matter, which they would do anyway. They can throw it out unceremoniously after they have considered it if they desire to do so. I do not think any advantage is gained for the amendment by the request of the Senator for unanimous consent, although I shall not object to it.

I think the procedure is irregular. It does not give any greater rights than the conferees have anyway. If it is going to be entered into with respect to the amendments of the Senator from Connecticut and the Senator from Missouri, undoubtedly there are other Senators here who have had in mind amendments they would have liked to offer, but who have not offered them, in some instances that I personally know about, because the members of the committee have assured the prospective proponents of amendments that they would be considered in conference.

Mr. VANDENBERG. Mr. President, since the only purpose I had was to facilitate matters, and apparently my request is operating in the other direction, I withdraw the request.

The PRESIDING OFFICER. The question is on agreeing to the amendment, in the nature of a substitute, offered by the Senator from Connecticut [Mr. WALCOTT]. [Putting the question.] By the sound, the noes seem to have it.

Mr. WALCOTT. I ask for a division.

Mr. BARKLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Copeland	Hebert	Overton
Ashurst	Couzens	Johnson	Patterson
Austin	Dickinson	Kean	Pope
Bachman	Dill	Keyes	Reynolds
Bailey	Duffy	King	Robinson, Ark.
Bankhead	Erickson	La Follette	Schall
Barbour	Fess	Lewis	Sheppard
Barkley	Fletcher	Logan	Steiwer
Black	Frazier	Lonergan	Stephens
Bone	George	McCarran	Thomas, Okla.
Borah	Gibson	McGill	Thomas, Utah
Bulkley	Glass	McKellar	Thompson
Bulow	Goldsborough	McNary	Tydings
Byrd	Gore	Metcalf	Vandenberg
Byrnes	Hale	Murphy	Van Nuys
Capper	Harrison	Neely	Wagner
Carey	Hastings	Norbeck	Walcott
Clark	Hatch	Norris	Walsh
Connally	Hatfield	Nye	Wheeler
Coolidge	Hayden	O'Mahoney	

The PRESIDING OFFICER. Seventy-nine Senators have answered to their names. A quorum is present. The question is on the amendment, in the nature of a substitute, offered by the Senator from Connecticut [Mr. WALCOTT] for the amendment of the Senator from Florida [Mr. FLETCHER].

Mr. WALCOTT. I demand the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. KEYES (when his name was called). I have a pair with my colleague, the junior Senator from New Hampshire [Mr. BROWN]. I understand that if he were present he would vote "nay." If permitted to vote, I should vote "yea."

Mr. LOGAN (when his name was called). I have a general pair with the junior Senator from Pennsylvania [Mr. DAVIS], who is absent. I do not know how he would vote if he were present. I transfer that pair to the senior Senator from Nevada [Mr. PITTMAN], and will vote. I vote "nay."

Mr. McKELLAR (when his name was called). On this vote I have a pair with the junior Senator from Delaware [Mr. TOWNSEND], who, I understand, is not present. I, therefore, transfer that pair to the junior Senator from Illinois [Mr. DIETERICH], and vote "nay."

Mr. ROBINSON of Arkansas (when his name was called). I transfer my general pair with the Senator from Pennsylvania [Mr. REED] to the junior Senator from Georgia [Mr. RUSSELL], and vote "nay."

The roll call was completed.

Mr. LEWIS. I announce the absence of the Senator from Louisiana [Mr. LONG], the junior Senator from Arkansas [Mrs. CARAWAY], the Senator from South Carolina [Mr. SMITH], the junior Senator from Illinois [Mr. DIETERICH], the Senator from New Hampshire [Mr. BROWN], the Senator from Colorado [Mr. COSTIGAN], the Senator from Nevada [Mr. PITTMAN], and the Senator from Florida [Mr. TRAMMELL], called away on official business; the absence of the Senator from California [Mr. MCADOO], occasioned by illness, and the absence of the Senator from Georgia [Mr. RUSSELL], occasioned by a death in his family. I ask that this announcement remain for the day, and to add that my colleague, the junior Senator from Illinois [Mr. DIETERICH], if present, would vote "nay."

I also wish to announce the following general pairs:

The Senator from California [Mr. MCADOO] with the Senator from New Mexico [Mr. CUTTING], and

The Senator from Florida [Mr. TRAMMELL] with the Senator from Minnesota [Mr. SCHALL]. The Senator from Florida would vote "nay" and the Senator from Minnesota would vote "yea", if present.

Mr. HEBERT. I announce the following general pairs:

The Senator from Maine [Mr. WHITE] with the Senator from Arkansas [Mrs. CARAWAY]; and

The Senator from Indiana [Mr. ROBINSON] with the Senator from Mississippi [Mr. STEPHENS].

I am not advised as to how the Senator from Maine and the Senator from Indiana would vote on this question if present.

Mr. STEPHENS. I have a pair with the senior Senator from Indiana [Mr. ROBINSON]. I transfer that pair to the Senator from South Carolina [Mr. SMITH] and will vote. I vote "nay."

The result was announced—yeas 30, nays 46, as follows:

YEAS—30

Adams	Dickinson	Hebert	Thomas, Okla.
Austin	Fess	Kean	Tydings
Barbour	Gibson	Lonergan	Vandenberg
Bulkley	Goldsborough	McNary	Wagner
Byrd	Gore	Metcalf	Walcott
Carey	Hale	Patterson	Walsh
Coolidge	Hastings	Reynolds	
Copeland	Hatfield	Steiwer	

NAYS—46

Ashurst	Connally	King	O'Mahoney
Bachman	Couzens	La Follette	Overton
Bailey	Dill	Lewis	Pope
Bankhead	Duffy	Logan	Robinson, Ark.
Barkley	Erickson	McCarran	Sheppard
Black	Fletcher	McGill	Stephens
Bone	Frazier	McKellar	Thomas, Utah
Borah	George	Murphy	Thompson
Bulow	Glass	Neely	Van Nuys
Byrnes	Harrison	Norbeck	Wheeler
Capper	Hatch	Norris	
Clark	Hayden	Nye	

NOT VOTING—20

Brown	Dieterich	Pittman	Shipstead
Caraway	Johnson	Reed	Smith
Costigan	Keyes	Robinson, Ind.	Townsend
Cutting	Long	Russell	Trammell
Davis	McAdoo	Schall	White

So Mr. WALCOTT's amendment in the nature of a substitute for the amendment of Mr. FLETCHER was rejected.

Mr. HASTINGS. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. In Mr. FLETCHER's amendment on page 5, after the word "first", in line 19, it is proposed to add the following:

and (3) by adding after the word "underwriter" the following words:

"As used in this paragraph, the term 'public offering' shall not be deemed to include an offering made solely to employees by an issuer or by its affiliates in connection with a bona fide plan for the payment of extra compensation or stock investment plan for the exclusive benefit of such employees."

Mr. HASTINGS. Mr. President, I may say that the amendment comes in section 4 of the Securities Act after paragraph 1.

Mr. FLETCHER. Mr. President, is this an amendment to the amendment which I have offered?

Mr. HASTINGS. That is correct.

Mr. FLETCHER. I have examined the amendment, and I see no objection to it.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Delaware [Mr. HASTINGS] to the amendment offered by the Senator from Florida [Mr. FLETCHER].

Mr. LEWIS. Mr. President, I should like to say, if I may be permitted, to the chairman of the committee and his aide, the Senator from Kentucky [Mr. BARKLEY], in the matter touching the school teachers of Illinois, I desire, if I may be allowed to do so, to withdraw the amendment suggested by me and to accept the amendment which the chairman himself now proposes to offer.

Mr. FLETCHER. Mr. President, the question now, as I understand, is on the amendment offered by the Senator from Delaware [Mr. HASTINGS].

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Delaware [Mr. HASTINGS] to the amendment of the Senator from Florida [Mr. FLETCHER].

The amendment to the amendment was agreed to.

Mr. THOMAS of Oklahoma. Mr. President, early in the present session I introduced a bill proposing to liberalize the Securities Act of 1933. I realize that at that time the duties of the committee were such that they could not reach that bill for consideration. When the pending bill came before the Senate I offered the substance of my bill as an amendment to it, and it is now lying on the table.

Mr. President, I call up that amendment and offer it as a substitute for the amendment of the Senator from Florida [Mr. FLETCHER]. I will not ask that the amendment be read but I will ask that it be printed in the RECORD in full at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment proposed by Mr. THOMAS of Oklahoma in the nature of a substitute for the amendment of Mr. FLETCHER is as follows:

On page 57, after line 9, insert the following:

"PART II—AMENDMENT OF SECURITIES ACT OF 1933

"SEC. 1. Sections 11, 12, 13, 14, 15, and 16 of the Securities Act of 1933 are hereby repealed.

"SEC. 2. Such act is amended by inserting after section 10 two new sections, as follows:

"'SEC. 11. To facilitate the operation of the provisions of this act and to the end that the issuance of securities may not be made unduly costly, the Commission is hereby authorized and empowered in its discretion to waive and dispense with the filing with it by any applicant for the issuance of securities any papers, documents, data, and/or information which in its judgment may be unnecessary in compliance with the purpose and spirit of this act, including any papers, documents, data, or information required by schedule A or schedule B hereof.'

"'SEC. 12. Except as provided in sections 20 and 24, the common law shall apply to any violation of the provisions of this act.'

"SEC. 3. Section 17 of such act is renumbered as section 13, and is amended by striking out, where they appear in subsection (a) (2), the following words: 'or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading'; and such section is further amended by striking out subsection (b) and by relettering subsection (c) as subsection (b).

"SEC. 4. Sections 18, 19, 20, 21, 22, and 23 of such act are hereby renumbered as sections 14, 15, 16, 17, 18, and 19, respectively.

"SEC. 5. Section 3 (a), first sentence and paragraph (1) of said act be amended to read as follows:

"'SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this act shall not apply to any of the following classes of securities: (1) Any security which, prior to July 26, 1933, has been sold or disposed of by the issuer or bona fide offerer to the public.'

"SEC. 6. Section 24 of such act is hereby renumbered as section 20, and is amended by inserting immediately before the word 'omits' the word 'willfully.'

"SEC. 7. Sections 25 and 26 of such act are hereby renumbered as sections 21 and 22."

Mr. THOMAS of Oklahoma. Mr. President, there are only one or two points I wish to take a brief time to explain. There are two objections in the main to the Securities Act of 1933. The first is that it requires mandatory reports of great volume. Some corporations in submitting their reports had to file them in volumes. I have information that one corporation has been required to file reports to such an extent that if the volumes were placed one on top of the other they would be 40 inches high. I doubt if anyone reads the reports. Of course, they are there for the purpose of reading if anyone wants to read them.

My amendment provides that the Commission in its discretion may waive the requirement for filing certain reports. If the Commission sees fit to order the reports as per the law, of course, the reports will be made. But my amendment would make it discretionary with the Commission as to whether the reports should be filed.

The second objection I have to the Securities Act is the severity of the penal clauses and the damage liability. The amendment I have submitted, instead of making the penalties as stringent as now contained in the law, would change the form of the penalties from statutory penalties to the common law. If that should prevail, then one who is damaged through false representation or misrepresentation may go into court and bring suit under the common law and get damages to the extent of his injury.

The existing law makes the company issuing the securities liable as follows:

First. A purchaser of securities may use the person named even though he purchased in the market after the securities had been sold several times.

Second. A purchaser may sue although he had never read or knew of the untrue statements or misleading statements before he purchased the securities.

Third. A purchaser need not establish a causal connection between the untruth and the loss sustained, nor is the purchaser barred if such causal connection be disproved.

Fourth. The burden of proof under the present law is on the defendant to establish the reasonableness of his investigation and belief rather than on the plaintiff to establish the contrary.

Mr. President, it is well known that because of this law the issuance of securities has practically ceased. I wish to place in the RECORD a statement of what has happened during the past 10 years. In the year 1928 the corporations of America issued and sold securities to the extent of $8,000,000,000. I shall omit the odd millions and thousands. That year corporations floated and sold $8,000,000,000 of securities, and the new money was used in the purchase of material and in the employment of labor. That was as much as our total export and import trade; in other words, the floating of securities has been of as much benefit to the United States during the past 10 years as all of our export trade and import trade combined.

In 1924 the total of securities issued was $5,500,000,000. In 1925 it was $6,220,000,000. In 1926 it was $6,000,000,000. In 1927 it was $7,000,000,000.

In 1929, the year the depression struck, companies issued $10,000,000,000 of securities. That was $10,000,000,000 for material, for transportation, and for labor in 1929. Last year, 1933, the total sum issued was $716,000,000. In other words, the money available for labor, material, and transportation last year was less than $1,000,000,000, while in 1929 it was more than $10,000,000,000.

Mr. BARKLEY. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Oklahoma yield to the Senator from Kentucky?

Mr. THOMAS of Oklahoma. I yield.

Mr. BARKLEY. Does the Senator attribute the falling off in 1933 entirely to the Securities Act?

Mr. THOMAS of Oklahoma. Of course, I have no means of knowing.

Mr. BARKLEY. The Securities Act did not go into effect until after the middle of the year. It was not passed until June, and then it took some time to set up the machinery. I doubt whether the act was in full operation for more than 3 months of the year 1933. It would not be fair to leave the implication that all the decline was due to that act.

Mr. THOMAS of Oklahoma. Of course, there is much in what the Senator from Kentucky has said.

Mr. BARKLEY. We know we had in the early part of the summer——

Mr. KEAN. Mr. President, will the Senator from Kentucky kindly repeat his statement? On this side we cannot hear what he is saying.

Mr. BARKLEY. I have said that no one in fairness could attribute to the Securities Act the decline in the issuance of securities in 1933. That act was passed about the first of June and did not become effective for quite a while, until the machinery was set up. I doubt whether the act was in full effect for more than 3 months of 1933. Of course we are all familiar with the bank holiday and the collapse of credit and the whole confused situation that brought Congress into extra session and made it necessary to enact a number of laws to relieve and safeguard the situation.

It is not fair to attribute the entire decline in the issuance of securities in 1933 to the operation of the Securities Act, which as a matter of fact was in operation for only about 3 months of that year. I have no doubt if the Securities Act had not been enacted there would have been a very material decline anyway in 1933. Of course no one could say just what it would have been.

Mr. TYDINGS. Mr. President, will the Senator from Oklahoma yield?

The PRESIDING OFFICER. Does the Senator from Oklahoma yield to the Senator from Maryland?

Mr. THOMAS of Oklahoma. I yield.

Mr. TYDINGS. I think it is also true that practically every depression has been cured primarily by a revival of the capital-issues market. Certainly today, I may say, in support of the observation of the Senator from Oklahoma, there is vast need for capital. There is a bill pending in Congress to enable the Federal Government itself to lend capital to industries. But in some of the measures we have passed we have gone so far as to prevent private investment houses from financing individuals because of the stringent restrictions thrown around them. I think the capital-issue revival has to precede any move out of the depression. Until we realize that fact, capital is not going to flow into the channels of industry and trade.

Mr. BARKLEY. Mr. President, will the Senator from Oklahoma yield further?

Mr. THOMAS of Oklahoma. I yield to the Senator from Kentucky.

Mr. BARKLEY. The reason why the Federal Government is lending money or preparing to lend money and why there are bills on the calendar to make direct loans to industry, is not because of any lack of issue of new securities, but because there is not now available credit for private industry through banking operations. We are all familiar with the situation. The concerns which are in need of money during the last 5 years could not sell securities in the markets if they issued them, because they could not even borrow money from banking institutions.

Mr. TYDINGS. Mr. President, I do not want to interfere unduly with the Senator from Oklahoma, but, if he will yield further, I should like to say that we have recently enacted a law which compels private banking houses to abandon all private deposits. Many people prefer to keep their money in private banking houses, yet we have forced them within a short time to take all that money out, notwithstanding it is all in investments. We have demoralized the investments of some of the oldest concerns in America. There is one in my State which dates back 100 years which has never been connected with any questionable transaction. I cannot see how there can be any movement out of the depression until private capital has a chance to go to the rescue of some of these concerns. The atmosphere of insecurity created by Congress is stopping the revival of many businesses because capital is loath to invest in them under existing circumstances.

Mr. KEAN. Mr. President, will the Senator from Oklahoma yield?

The PRESIDING OFFICER. Does the Senator from Oklahoma yield to the Senator from New Jersey?

Mr. THOMAS of Oklahoma. I yield.

Mr. KEAN. I have in my office a list of fully 100 companies which need investment capital and are anxious to obtain it, but owing to the Securities Act they cannot obtain capital at the present time. Some of them have applied to me personally for capital and I have refused to do any underwriting on account of the Securities Act.

Mr. BARKLEY. Mr. President, will the Senator give the Senate the benefit of the names of some of those concerns which want to issue capital stock and will not do it because of the Securities Act?

Mr. KEAN. I shall be glad to file a list.

Mr. BARKLEY. I have been hearing there are companies which could not issue any stock because of the act referred to. I have never heard one named. If the Senator can name one, I should like to have him do so. I am not saying that to dispute what the Senator has said, but I should like to have what the lawyers call a proffer in open court.

Mr. KEAN. I have a list of about 100 of them.

Mr. BONE. Mr. President, will the Senator from Oklahoma permit me to ask the Senator from New Jersey a question?

Mr. THOMAS of Oklahoma. I yield to the Senator from Washington.

Mr. BONE. Were any of the companies to which the Senator referred desirous of making loans in 1932?

Mr. KEAN. I do not know about that.

Mr. BONE. Can the Senator enlighten us as to why they want the money now and did not want it in 1932?

Mr. KEAN. Yes. At the present time business is such that they are borrowing too much money from the banks, and they want to get it in the form of refunded capital, permanent capital, instead of borrowing money from the banks.

Mr. THOMAS of Oklahoma. Mr. President, under the existing law, if a corporation desires to issue securities in the nature of bonds, the managing officers, the president, vice president, secretary, treasurer, and the directors must get out a statement or prospectus giving the financial set-up of the corporation. In the case of the larger companies, the president cannot know all about the details of the corporation. He must have his engineers, auditors, and other high-class expert assistants.

The president and the other officers must rely upon the work of the assistants in preparing these representations and prospectuses. Under existing law, if a company issues such a prospectus, relying upon the expert advice of engineers and auditors, and if the prospectus inadvertently, honestly, makes a statement of fact which later turns out to be a misstatement, the president, secretary, treasurer, and directors are personally liable. Because of that, men who have lived for some time and have acquired a competency hesitate to step out and start to finance new expansion and new development, taking a chance, where they have to rely upon their assistants for facts which they cannot secure themselves. They hesitate, and in fact refuse, to put out such prospectuses; and, because of that fact, practically nothing at present is being done in the way of flotation of securities.

Mr. DILL. Mr. President——

The PRESIDING OFFICER. Does the Senator from Oklahoma yield to the Senator from Washington?

Mr. THOMAS of Oklahoma. I do.

Mr. DILL. Is it not a fact also that a great many corporations that are ready to abide by the law, and ready to issue prospectuses, find themselves prevented by the Federal Trade Commission from even being given permission to do so?

I desire to say to the Senator that the mining business in the Northwest, the section from which I come, has been absolutely stopped so far as new financing is concerned for the reason that the Federal Trade Commission refuses to permit even the issuance of prospectuses and makes demand after demand for more information and new information. As a result, there is not any development of the mining business in the Northwest, at least, and there will not be so long as these restrictions are contained in the law.

Mr. TYDINGS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Oklahoma yield to the Senator from Maryland?

Mr. THOMAS of Oklahoma. I do.

Mr. TYDINGS. Is it not a fact that the more difficult it is to obtain capital, the higher the interest rate the borrowing concern has to pay?

Mr. THOMAS of Oklahoma. There is no doubt about that.

Mr. TYDINGS. I heard the other day about a concern that was called upon to refinance and had to pay 12 percent for the money, because the broker told the officers frankly that financing under existing conditions would require a heavy discount. I also know that in my own State the obligations of some of our large concerns are maturing next year, and as things are now projected there is no hope that they can refinance; and, if they do, under this bill they will get less money than they would have gotten otherwise, because the charge will be exorbitant.

Mr. THOMAS of Oklahoma. The Senator from Kentucky asked me a moment ago if there are any companies that are ready to finance if they can float their securities. Of course, I cannot answer that question definitely; but I have the name of a company that I could give, and I will give it to the Senator privately if he desires, whose officers tell me they are ready to build a pipe line from Oklahoma and Texas through the North and East. This pipe line will cost $250,000,000. That is a quarter of a billion dollars.

The PRESIDING OFFICER. The time of the Senator from Oklahoma has expired.

Mr. THOMAS of Oklahoma. I will use time on the bill.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized on the bill.

Mr. THOMAS of Oklahoma. This financing, if allowed, would involve the expenditure of labor to obtain the iron, the transportation of the iron ore to the smelters and to the mills to make it into pipe, the transportation of the pipe to the particular territory in which the pipe line is to be laid, the acquisition of land over many miles from farmers and others on which to lay the pipe line, the employment of labor in laying the pipe line, and then, of course, other labor that might be required in connection with it. So it seems to me that until these large concerns can float their securities and get the necessary money, there is no chance to revive the vast expenditures of this kind which we witnessed in previous years.

Mr. President, I do not desire to take the time of the Senate, because I realize that no material amendment has been adopted to this bill so far, and probably will not be. I have taken this occasion to call to the attention of the Senate, the committee, and especially the conferees, the difficulties as I see them.

The first one is the requirement as to elaborate reports. I suggest that when the conferees meet that point be considered, and that the Commission which is to administer the act be given power to waive the submission of such reports as may not be material.

The second suggestion I make is that the conferees minimize and liberalize the penalties. Of course, one who deliberately makes a misstatement of fact should be punished. No one will controvert that contention; but where presidents and corporate heads are forced to rely upon auditors and others in making out their reports it occurs to me that the common law penalty against a corporation would be ample.

With these suggestions, Mr. President, I shall not ask that the amendment be put to a vote; but I will ask the conferees to consider these features when they come to write the bill in conference, especially the amendments to the Securities Act of 1933.

The PRESIDING OFFICER. Does the Senator withdraw his amendment?

Mr. THOMAS of Oklahoma. I do.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Florida [Mr. FLETCHER].

The amendment was agreed to.

Mr. FESS. Mr. President, in line with what the Senator from Oklahoma [Mr. THOMAS] has just been saying, there is a very interesting article from a finance writer in this morning's Washington Post analyzing the credit situation. I ask unanimous consent that it be inserted in the RECORD.

The PRESIDING OFFICER. Without objection, the article will be printed in the RECORD.

The article is as follows:

[From the Washington Post of Saturday, May 12, 1934]

ANALYSTS CREDIT STOCK MARKET WEAKNESS TO BAD TRADE OUTLOOK, UNCERTAINTY OVER GOVERNMENTAL POLICIES, EXCHANGE BILL

By Ralph West Robey

Among stock-market analysts in New York the decline of this week is credited on the whole to three things: First, the increasing volume of evidence that business has passed the seasonal peak and now is on the downgrade; secondly, a growing uncertainty over governmental policies of the next few months and the fear that we are faced with still more regimentation and experimentation; thirdly, the rather wide-spread, although more or less indefinite apprehension over the possible effects of the security-exchange bill.

If one could assign definite weights to these factors it appears the greatest importance would be given to the first one listed. On all sides in the New York financial district one now hears bearish prophecies as to the future of business. Insofar as I have discovered no one questions that the decline will be more than seasonal. It merely is a question of how much more than seasonal it is to be. Among the more optimistic, 5 percent is a commonly quoted figure. Others estimate it will be as much as 20 percent.

BUSINESS FIGURES STILL REFLECT BETTER CONDITIONS

To those who give only casual attention to business statistics such prophecies may appear strange, for it is true that several of the major indicators of the trend still are climbing, and the Federal Reserve Board indices continue to reflect improvement. The reason for the discrepancy between this record and the views of the analysts is partly because of unusual forces tending to hold up particular lines of business and partly because of the shortcomings in the corrections of the indices for seasonal variations.

Thus in the case of steel production it is emphasized that current buying is anticipating the needs of the third quarter to an unusual degree. This anticipation is the result of a desire of the buyers to get their orders filled before the announced price advance takes place. Steel scrap prices, which are taken as a reliable indicator of the trend in the industry, recently have shown marked weakness.

Seasonal corrections are viewed as important because the spring improvement has lasted beyond the usual date. In consequence the normal corrections give a false picture of the actual situation, tending to hold the indexes at an abnormally high figure. Later they will work in the opposite direction.

REPORTS ON GOVERNMENTAL POLICY SHOW INCONSISTENCY

The uncertainty over future governmental policies is the inevitable consequence of trying to conclude where we are headed from the inconsistent stories coming out of Washington. To some extent there has been such inconsistency from the start of this administration, but many people in the street feel that it is greater today than at almost any earlier period. Time after time recently the entire outlook has been changed over night. A notable example have been the reports this week on silver. On Monday it was stated nothing was to be done, on Tuesday the President had agreed to a far-reaching program, on Wednesday the whole program was in a deadlock.

Apprehension over the stock exchange bill probably is the least important of the three factors mentioned. So far as I can determine, it amounts in the final analysis to little more than disliking the idea of a governmental group having a whip hand over the market at all times.

Mr. FLETCHER. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. FLETCHER. Mr. President, the amendment has been printed, and I have made no change at all in it. I ask to have it printed in the RECORD, and that the further reading be dispensed with.

The PRESIDING OFFICER. Without objection, that order will be made.

Mr. FLETCHER'S amendment is to insert at the end of the bill the following new sections:

SEC. 211. Section 2 of the Securities Act of 1933 is amended by adding at the end thereof the following new paragraphs:

"(13) The term 'protective committee' means any persons or group of persons who propose or purport to act, or who on the date this paragraph takes effect are acting, for and in behalf of owners or holders of securities for the purpose of protecting, preserving, and/or forwarding the common interests of owners or holders of such securities (A) in connection with a reorganization, rehabilitation, or liquidation of, or composition by, the issuer of the securities, (B) the substitution of other securities therefor, (C) a readjustment or modification of the rights or liabilities evidenced by or embodied in the securities, or (D) the assertion of any such rights other than voting rights; except that such term shall not include any person or group of persons upon whom authority so to act was or is conferred by the instrument under which the securities were originally issued or by any amendment to such instrument.

"(14) The term 'protective committee agreement' means any agreement, consent, authorization, power of attorney, or other instrument, by whatever name called, by which the owners or holders of securities confer upon a protective committee authority to act for and in their behalf.

"(15) The term 'plan of reorganization' means any plan or agreement for reorganization, rehabilitation, liquidation, or composition, or for readjustment or modification of securities, or for the assertion of rights (other than voting rights) evidenced by or embodied in any securities."

SEC. 212. (a) Section 17 of such act is amended by adding after subsection (b) thereof the following new subsections:

"(c) From and after 60 days after this subsection takes effect, it shall be unlawful for any protective committee, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails in order to solicit a protective committee agreement or any amendment thereto, or in order to solicit adherence, assent, or consent to any such agreement or amendment, or in order to submit any such agreement or amendment for an expression of assent or dissent, or in order to solicit adherence, assent, or consent to any plan of reorganization or any amendment thereto, or in order to submit any such plan or amendment for an expression of assent or dissent, unless—

"(1) a statement concerning such agreement, plan, or amendment, complying with the requirements of subsection (d) shall be in effect;

"(2) at the time of filing of the statement referred to in paragraph (1), such committee shall file with the Commission (A) an undertaking to file monthly thereafter, until the Commission shall determine by appropriate order that the committee has ceased operation, a written report under oath, for the period not covered by previous reports, in such form and containing such information concerning the activities of the committee as the Commission, by rules and regulations, may require as necessary or appropriate for the proper protection of investors, and a list showing the names and the last-known addresses of any persons (other than those listed in any list previously filed) to whom any individual solicitation or submission is proposed to be addressed at the date of the filing of the list, or was addressed during the period since the filing of the last previous list; and (B) an undertaking to file with the Commission copies of any amendments thereafter made to the protective committee agreement or plan of reorganization, and copies of any plan of reorganization thereafter adopted pursuant to the provisions of the protective committee agreement, such filing to be made not later than 10 days after such amendment is made or such plan is adopted;

"(3) at or before the time of solicitation or submission by any such means, the committee shall, (A) in the case of an individual solicitation or submission, send or give to each person to whom the solicitation or submission is addressed a copy of a summary of such of the information contained in the statement required under paragraph (1) as the Commission may by rules and regulations require as necessary or appropriate for the proper protection of investors, or (B) in the case of solicitation or submission by general notice or advertisement, offer to furnish on request a copy of such summary to any member of the group to which the solicitation or submission is addressed; and

"(4) In any case in which the terms of the protective committee agreement, the composition of the protective committee, and/or the qualifications of its members, fail to conform to the recommendations which may be established by the Commission from time to time for various classes of securities and types of situations, all written communications or communications by radio, made by the committee in the course of any solicitation or submission of the character referred to in this subsection, shall contain a clear statement to that effect. In the case of a written communication, such statement shall be in print, type, or writing as legible as that used generally throughout the communication and shall be followed by a brief summary of the provisions or matters in which there is failure to conform to the Commission's recommendations.

"(d) The statement required under subsection (c) (1) shall be filed with the Commission in triplicate, shall be signed by every member of the committee, shall include such information, documents, and exhibits as the Commission by rules and regulations may require as necessary or appropriate for the proper protection of investors, comparable in character to that required in registration statements for certificates of deposit, and shall include specifically a list giving the last-known address of each person known or believed to be the owner or holder of securities to whom any individual solicitation and/or submission is, at the date of filing such statement, proposed to be addressed. A statement with respect to an amendment to a plan of reorganization or a protective committee agreement concerning which a statement has previously been filed, or with respect to a plan of reorganization adopted pursuant to any such agreement, may be filed as an amendment to such previously filed statement. The provisions of section 6 (d) and section 8 with reference to registration statements shall apply to statements required under subsection (c) (1), and the term 'issuer' as used in such sections shall apply to the protective committee. At the time of filing any statement required under such subsection the committee filing the same shall pay to the Commission a fee of $25. The filing of any such statement or of an amendment thereto shall be deemed to have taken place upon the receipt thereof if it is accompanied by a United States postal money order or certified bank check or cash for the amount of the fee required. No such statement shall be filed within the first 30 days after subsection (c) takes effect.

"(e) The provisions of subsection (c) of this section shall not apply to any protective committee which proposes or purports to act for and in behalf of (1) a group of not more than 25 persons; (2) security holders who are all persons resident in, and/or corporations incorporated by and doing business in, the the State or Territory in which the members of the committee are all resident; (3) holders of securities of the classes referred to in section 3 (a) (2) or (3); or (4) holders of securities of a value of not more than $100,000, as determined in accordance with the rules and regulations of the Commission, if the committee complies with such terms and conditions as the Commission may by rules and regulations prescribe as necessary or appropriate for the proper protection of investors."

(b) The last subsection of section 17 of such act is amended by striking out "(c)" and inserting in lieu thereof "(f)."

SEC. 213. Section 23 of such act is amended to read as follows:

"SEC. 23. Neither the fact that a registration statement for a security or a statement required under section 17 (c) has been filed or is in effect, nor the fact that a stop order is not in effect with respect thereto, shall be deemed a finding by the Commission that such statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit a material fact,

or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, any security, or any protective committee, protective committee agreement, or plan of reorganization. It shall be unlawful to make, or cause to be made, to any person, any representation contrary to the foregoing provisions of this section."

SEC. 214. Section 24 of such act is amended to read as follows:

"SEC. 24. Any person who willfully violates any of the provisions of this title, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully fails to carry out the terms of any undertaking filed with the Commission as required by the provisions of this title, or any person who willfully, in a registration statement, or in any statement, list, or report required to be filed under section 17 (c) (1) or (2), or in any summary required to be sent, given, or furnished under section 17 (c) (3), makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both."

Mr. FLETCHER. I have a memorandum explaining the amendment, which I ask to have printed in the RECORD without reading.

The PRESIDING OFFICER. Without objection, that order will be made.

The memorandum is as follows:

MEMORANDUM EXPLANATORY OF THE ATTACHED PROPOSED AMENDMENTS TO THE SECURITIES ACT OF 1933 OFFERED AS AMENDMENTS TO THE NATIONAL SECURITIES EXCHANGE ACT

Section 211: This section adds definitions of the terms "protective committee", "protective committee agreement", and "plan of reorganization." The definition of the term "protective committee" is based upon the definition contained in the Public Trust Commission Act of Michigan, section 2 (d) (Mich. 1933, Public Act No. 89, as amended by Act No. 205). The term is so defined as to apply to committees existing at the time of the passage of the act. It excludes therefrom a trustee under the trust indenture under which the bonds were originally issued. The term "protective committee agreement" is intended to be drawn broadly enough to include any instrument by which committees secure power from security holders. In order to avoid the provisions of the Securities Act, which apply only in case of a sale of securities, many committees have adopted the device of securing powers of attorney rather than of issuing certificates of deposit. This definition will subject such committees to the provisions of section 17 as proposed to be amended.

Section 212: This section proposes to amend section 17 of the Securities Act. Section 17 was chosen because its provisions are left untouched by the proposed amendment to the Bankruptcy Act (H.R. 5884).

This section adds three new subsections to section 17. Subsection (c) (1) requires of committees the filing of a statement with the Commission, which, as described by subsection (d), will correspond to a registration statement now required for nonexempt certificates of deposit. Paragraph (2) requires an undertaking of each committee to furnish monthly reports on its activities, to furnish supplemental lists of security holders solicited and copies of plans and of amendments to agreements and plans later adopted. Paragraph (3) requires each committee to furnish the security holders it solicits copies of a summary of the statement required by paragraph (1), which will correspond to the prospectus provided for in section 10 for registered securities. Paragraph (4) authorizes the Commission to establish recommendations as to the terms of protective committee agreements and the composition and membership qualifications of protective committees, and requires all literature and broadcasts of committees to contain statements that there is failure to conform to such recommendations if such is the case. The subsection takes active effect after 60 days.

Subsection (d) describes the statement required under subsection (c). It is to contain information corresponding to that required in registration statements for certificates of deposit. The Commission is given the power to issue stop orders against the effectiveness of any statement, as in the case of registration statements. A filing fee of $25 is charged. No statements are to be filed for the first 30 days after the subsection takes effect, so that the Commission may evolve machinery for handling the new requirements.

Subsection (e) provides exemptions which correspond, in general, to the following exemptions from registration provided in the act: Section 4 (1), second clause, exemption for nonpublic offerings; section 5 (c)—or as proposed in the amendments heretofore submitted, section 3 (a) (11)—exemption for local offerings; section 3 (a) (2) and (3), exemptions for governmental and bank securities, and for short-term obligations, here applied to protective committees acting for such securities; section 3 (b), exemptions for issues of less than $100,000, on conditions established by the Commission.

Section 213: This amendment applies the present provisions of section 23 to the statements required under new subsection (c) (1) of section 17.

Section 214: The proposed amendment to section 24 imposes criminal liability for violation of the new provisions, including misstatements in the required statements, lists, reports, or summaries, and failures to carry out any agreements required by the new provisions.

It is to be noted that enforcement of the provisions of the new subsection is left to injunction, stop order, and criminal prosecution. No civil liability attaches for any violation thereof.

Mr. FLETCHER. I will state that the purpose of the amendment is to place under the jurisdiction of the Federal Trade Commission, so far as the Securities Act goes, bondholders' committees or protective committees. Senators know about them. I need not take the time of the Senate to tell about their operations.

Where bonds are in default, protective committees or bondholders' committees are immediately formed, very often controlled by the people who issued or distributed the bonds. Such committees call for the bonds to be sent in to them, under the representation that they will look after the interests of the bondholders. The bonds are sent in and the committees issue receipts or certificates of some kind against them, and are supposed to endeavor to realize upon the bonds and to take care of the interests of the bondholders.

I have numbers of letters from all parts of the country, from people who have put up their bonds with these committees, in which they say, "We cannot find out anything about our bonds. We understand that a receiver has been appointed, and that receivers' fees and lawyers' fees and other expenses are eating up everything, but we hear nothing as to any interest payments or prospects of realizing anything on the bonds."

Of course, a bondholder may go into court, I take it, and compel an accounting, and reach an adjustment of some kind in that way; but that is too burdensome. It is practically prohibitory, because a bondholder would have to pay out for lawyers' fees and expenses in procuring court action more than his bond would be worth; so that now the bondholders are practically helpless. They are entirely in the hands of the committees; and I think there ought to be some requirement that such committees shall file with the Federal Trade Commission their agreements with the bondholders, and shall be required to make reports there.

The amendment is a rather long one to accomplish that purpose. I thought it might be shortened; but it is very specific and leaves nothing in doubt about what the Federal Trade Commission will do and what it will require of bondholders' or protective committees. Of course, under the amendment the functions of the Federal Trade Commission are transferred to the special commission.

That is the whole proposition. I think there is need for this proposed legislation.

Mr. BORAH. Mr. President, do I understand the Senator to say that in view of the fact that the functions of the Federal Trade Commission are transferred to the proposed special commission, such reports will be made to the special commission rather than to the Federal Trade Commission?

Mr. FLETCHER. Yes; precisely. All the duties under the Securities Act will go to the new commission if the amendment shall be agreed to.

Mr. BORAH. Then this amendment takes that function away from the Federal Trade Commission?

Mr. FLETCHER. It puts it under the Securities Act, and the whole matter will now go to the new commission.

Mr. BARKLEY. Mr. President, these reports are not now made to anybody. The amendment covers a situation which is not covered at present, so that it is part of the securities situation.

Mr. FLETCHER. It is a new provision.

Mr. BARKLEY. It will go to whatever commission is finally given jurisdiction.

Mr. ROBINSON of Arkansas. Mr. President, if the result of the conference should be that the duties under this act should devolve upon the Federal Trade Commission, jurisdiction would go to the Federal Trade Commission?

Mr. FLETCHER. Yes.

Mr. BORAH. The amendment, then, would simply send that question to conference?

Mr. FLETCHER. Yes.

Mr. BONE. Mr. President, as I understand, the amendment simply creates the mechanism and machinery through which the committees would function.

Mr. FLETCHER. Yes; it gives an additional duty to the Federal Trade Commission in connection with the Securities Act.

Mr. BONE. The amendment adds nothing to the amendment, except the feature as to the machinery under which creditors and security holders can act?

Mr. FLETCHER. Yes.

Mr. JOHNSON. Mr. President, may I ask the Senator from Florida whether the corporation that has now been created under the laws of Delaware and is now functioning in relation to defaulted bonds would be within the purview of this amendment?

Mr. FLETCHER. I think the amendment does not affect that corporation at all.

Mr. JOHNSON. Why not? Why should it not do so?

Mr. FLETCHER. I really do not know just what they are doing. We originally provided in the Securities Act for setting up some control over foreign bonds; but that was never carried out, as the Senator will remember. The corporation referred to by the Senator was organized, but I do not know just what it is doing. Does the Senator mean whether they would be required——

Mr. JOHNSON. To do the acts which are required to be done by the so-called "protective committees", and the like, under this amendment?

Mr. FLETCHER. I should think so.

Mr. JOHNSON. I wanted to get of record a statement as to whether or not, in the opinion of the chairman of the committee, that was the fact.

Mr. FLETCHER. I think so.

Mr. JOHNSON. The chairman of the committee will recall that title II was annexed to the Securities Act for the formation of a public corporation. In the conference between the two Houses there was inserted a sentence to the effect that title II should not become operative until it had been proclaimed by the President. The President has never proclaimed it.

Mr. FLETCHER. That is my understanding.

Mr. JOHNSON. In lieu of that, a private corporation was organized under the laws of the State of Delaware, and is now operating. That private corporation was designed to perform the function required under title II of the Securities Act, and I was curious to know, as I glanced hastily through this amendment, whether, under the amendment, that private corporation, now acting for bondholders throughout the country, or endeavoring to do so, would continue to act. That is the opinion of the chairman of the committee?

Mr. FLETCHER. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Florida.

The amendment was agreed to.

Mr. BYRNES. Mr. President, I have one or two amendments I desire to offer. I send the first amendment to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The CHIEF CLERK. In section 30, it is proposed to strike out the words "in any material respect" wherever they appear and to insert in lieu thereof the words "with respect to any material fact."

Mr. BYRNES. Mr. President, in explanation of the necessity for that amendment, let me say that I find that those words appear in one or two places in the measure other than the places where they were corrected by the amendment of the Senator from Oregon and the amendment is to make the entire bill in accord with the action of the Senate with reference to those words.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from South Carolina.

The amendment was agreed to.

Mr. BYRNES. Mr. President, I send another amendment to the desk and ask that it be agreed to.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 21, line 20, it is proposed to strike out the words "party to the transaction."

Mr. BYRNES. The necessity for this amendment lies in the fact that in drafting the bill there was a mistake in including the words "party to the transaction", which really is a limitation which was not intended by the committee.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BYRNES. Mr. President, I offer another amendment.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 44, beginning with the comma in line 19, it is proposed to strike out down to the word "action" in line 21, as follows:

unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

Mr. BYRNES. Mr. President, that, too, is a clarifying amendment which it is necessary to adopt.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BYRNES. Mr. President, I send another amendment to the desk and ask for its adoption.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. It is proposed to insert at the end of the bill a new section, as follows:

SEC. 215. Section 3 (a) (10) of the Securities Act of 1933 is amended to read as follows:

"(10) Any security which is issued in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, where the conditions of such issuance and exchange (including the fees or remuneration chargeable directly or indirectly to the persons to whom it is proposed to issue securities or to the issuer of such securities, in connection with the preparation or execution of the plan under which such securities are issued) are approved, after a hearing upon the fairness of such conditions of which all persons to whom it is proposed to issue securities in such exchange shall be given reasonable notice and in which all such persons shall be given an opportunity to appear, by any court, or by any official or agency of the United States, or by any State banking or insurance commission or similar authority."

Mr. BYRNES. Mr. President, the members of the Federal Trade Commission, charged with the administration of the act, state that if the amendment of the Senator from Florida shall be adopted as to the bondholders' protective situation, which has been explained by the Senator, it will be essential to adopt this amendment in order to correct language which would be inconsistent with the language of the existing law. It is solely to clarify the situation that would arise as a result of the adoption of the amendment of the Senator from Florida.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. FLETCHER. Mr. President, all the amendments now having been agreed to, I ask that the Senate proceed to the consideration of the bill (H.R. 9323) to provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill.

Mr. FLETCHER. Mr. President, I move to amend the bill now before the Senate by striking out all after the enacting clause and inserting in lieu thereof Senate bill 3420, which has been under consideration in the Senate, as it has been amended.

Mr. BULKLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Coolidge	Hayden	O'Mahoney
Ashurst	Couzens	Hebert	Overton
Austin	Dickinson	Johnson	Patterson
Bachman	Dill	Kean	Reynolds
Bailey	Duffy	King	Robinson, Ark.
Bankhead	Erickson	La Follette	Schall
Barbour	Fess	Lewis	Sheppard
Barkley	Fletcher	Logan	Steiwer
Black	Frazier	Lonergan	Stephens
Bone	George	McCarran	Thomas, Okla.
Borah	Gibson	McGill	Thomas, Utah
Bulkley	Glass	McKellar	Thompson
Bulow	Goldsborough	McNary	Tydings
Byrd	Gore	Metcalf	Vandenberg
Byrnes	Hale	Murphy	Van Nuys
Capper	Harrison	Neely	Wagner
Carey	Hastings	Norbeck	Walcott
Clark	Hatch	Norris	Walsh
Connally	Hatfield	Nye	Wheeler

The VICE PRESIDENT. Seventy-six Senators having answered to their names, there is a quorum present.

The question is on agreeing to the amendment proposed by the Senator from Florida [Mr. FLETCHER], that all after the enacting clause of the House bill now before the Senate be stricken out, and that there be inserted in lieu thereof Senate bill 3420, as it has been amended in the Senate.

The amendment was agreed to.

The VICE PRESIDENT. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The VICE PRESIDENT. The question now is, Shall the bill pass?

Mr. ROBINSON of Arkansas. I ask for the yeas and nays.

The yeas and nays were ordered, and the legislative clerk proceeded to call the roll.

Mr. COPELAND (when his name was called). Upon this vote I have a pair with the junior Senator from Maine [Mr. WHITE]. Not knowing how that Senator would vote, in his absence I withhould my vote.

Mr. LA FOLLETTE (when Mr. CUTTING's name was called). I have been requested to announce the unavoidable absence of the senior Senator from New Mexico [Mr. CUTTING]. If he were present, he would vote "yea."

Mr. LOGAN (when his name was called). I have a general pair with the junior Senator from Pennsylvania [Mr. DAVIS]. Not knowing how he would vote, I make the same transfer as on the previous vote, and will vote. I vote "yea."

Mr. McKELLAR (when his name was called). I have a general pair with the junior Senator from Delaware [Mr. TOWNSEND). I transfer that pair to the junior Senator from Illinois [Mr. DIETERICH], and will vote. I vote "yea."

Mr. STEPHENS (when his name was called). Making the same announcement as before regarding my pair with the senior Senator from Indiana [Mr. ROBINSON] and its transfer, I vote "yea."

Mr. WALCOTT (when his name was called). I have a general pair with the junior Senator from California [Mr. McADOO], who is detained from the Senate on account of illness. Not knowing how he would vote, I refrain from voting. If at liberty to vote, I should vote "nay."

The roll call was concluded.

Mr. LEWIS. I beg to reannounce the absence of certain Senators as announced on the previous roll call, and for the reasons given, to which I add that my colleague [Mr. DIETERICH], if present and voting, would vote "yea" on this roll call.

I further wish to announce that if present and voting the Senator from New Hampshire [Mr. BROWN], the Senator from Arkansas [Mrs. CARAWAY], the Senator from California [Mr. McADOO], the Senator from Louisiana [Mr. LONG], the Senator from Nevada [Mr. PITTMAN], the Senator from Idaho [Mr. POPE], the Senator from Georgia [Mr. RUSSELL], the Senator from South Carolina [Mr. SMITH], and the Senator from Florida [Mr. TRAMMELL] would vote "yea." These Senators are necessarily detained from the Senate.

Mr. ROBINSON of Arkansas (after having voted in the affirmative). Announcing my general pair with the senior Senator from Pennsylvania [Mr. REED], and making the same transfer as on the previous roll call, I will permit my vote to stand.

Mr. NEELY. I am authorized to announce that the Senator from Colorado [Mr. COSTIGAN] is unavoidably absent. If he were present, he would, on this roll call, vote "yea."

Mr. HEBERT. The Senator from New Hampshire [Mr. KEYES] is paired with his colleague from that State [Mr. BROWN]. I am advised that if the senior Senator from New Hampshire [Mr. KEYES] were present, he would vote "nay" on this question, and the junior Senator from New Hampshire [Mr. BROWN], if present, would vote "yea."

I also desire to announce that the senior Senator from Pennsylvania [Mr. REED], the senior Senator from Indiana [Mr. ROBINSON], the junior Senator from Maine [Mr. WHITE], the senior Senator from New Hampshire [Mr. KEYES], the junior Senator from Pennsylvania [Mr. DAVIS], the junior Senator from Delaware [Mr. TOWNSEND], and the senior Senator from Minnesota [Mr. SHIPSTEAD] are necessarily absent.

The result was announced—yeas 62, nays 13, as follows:

YEAS—62

Adams	Coolidge	La Follette	Robinson, Ark.
Ashurst	Couzens	Lewis	Schall
Bachman	Dickinson	Logan	Sheppard
Bailey	Dill	Lonergan	Steiwer
Bankhead	Duffy	McCarran	Stephens
Barkley	Erickson	McGill	Thomas, Okla.
Black	Fletcher	McKellar	Thomas, Utah
Bone	Frazier	McNary	Thompson
Borah	George	Murphy	Tydings
Bulkley	Gibson	Neely	Vandenberg
Bulow	Glass	Norbeck	Van Nuys
Byrd	Harrison	Norris	Wagner
Byrnes	Hatch	Nye	Walsh
Capper	Hayden	O'Mahoney	Wheeler
Clark	Johnson	Overton	
Connally	King	Reynolds	

NAYS—13

Austin	Goldsborough	Hastings	Kean
Barbour	Gore	Hatfield	Metcalf
Carey	Hale	Hebert	Patterson
Fess			

NOT VOTING—21

Brown	Dieterich	Reed	Trammell
Caraway	Keyes	Robinson, Ind.	Walcott
Copeland	Long	Russell	White
Costigan	McAdoo	Shipstead	
Cutting	Pittman	Smith	
Davis	Pope	Townsend	

So the bill was passed.

The VICE PRESIDENT. Without objection, Senate bill 3420 will be indefinitely postponed.

Mr. SHIPSTEAD subsequently said: Mr. President, when the vote was taken on the securities bill I was unavoidably absent at the White House on official business, and could not return for the vote. I favor the bill, and if I had been here I should have voted for it. I should like to have the RECORD so show.

Mr. FLETCHER. Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD a communication from James M. Landis, Commissioner of the Federal Trade Commission, which bears on the so-called "Hastings amendment." It is a very instructive communication.

There being no objection, the communication was ordered to be printed in the RECORD, as follows:

FEDERAL TRADE COMMISSION,
Washington, May 2, 1934.

MY DEAR SENATOR FLETCHER: I have examined the bill introduced by Senator HASTINGS for the amendment of the Securities Act of 1933, Senate bill 3301, and am pleased to furnish you herewith certain comments on the provisions of that bill. The bill for the most part presents verbatim the amendments to the Securities Act proposed in a report of the special committee of the American Bar Association on amendments to the Securities Act of 1933, which was published last month after approval by the executive committee of the American Bar Association. Therefore, in certain instances I shall discuss the bill in the light of the comments upon its provisions contained in the foregoing report, and I shall also attempt to point out certain of the changes which have been made from the proposals contained in that report.

1. AMENDMENT TO SECTION 2 (11)

The most important change which would be made by this amendment would effect a complete elimination from the status of an underwriter under the act of all persons who are what may be termed "the traditional type of underwriter", or, as the Bar Association report states: "Actual underwriters; that is, persons who agree to take up securities if the distribution to the public is a failure." It is probably true that in many cases such persons do not openly and actively promote the sale of an issue of securities which they have underwritten. Nevertheless, they really are a vital cause of the distribution of an issue to the public, and, having assumed such responsibility, I do not believe that they should be permitted to escape legal liability for any dereliction from the responsibility which they so assume. Even though such underwriters may not openly and actively promote the sale of an underwritten issue, it is almost always to their interest to see that the issue is successfully marketed to the public and by indirect methods they frequently will attempt to promote the distribution of the issue. Even though such underwriters may not intentionally undertake any such promotion, the very fact that such a person which may be a prominent and responsible banking house has underwritten the issue will become an important factor in the public mind in the passing of judgment upon the merit of the security. Such underwriters, practically without exception, will undertake a careful examination of the terms and merits of an issue before assuming the underwriting commitment. The investing public knows this fact, and therefore the sale of the security is promoted by the mere indirect dissemination of knowledge of such underwriting. The present provisions of section 2 (11) of the act place underwriters of this type within the definition of underwriters under the act, and I believe that persons who frequently play such an important part in connection with the public distribution of a security should not be permitted to escape from all responsibility under the act.

Certain of the provisions contained in the second sentence of the proposed amendment effect changes beyond the elimination of the traditional type of underwriter. Clause (a) contains language already in the act, except insofar as a very dangerous change has been made in the introduction to this sentence. The act now provides that the term "underwriter" "shall not include a person whose interest is limited to a commission", etc. The proposed amendment would merely state: "a person shall not be deemed an underwriter by reason of * * *." While the proper effect of these two forms of phraseology would probably be the same, there is a very grave possibility that the new language would not be as specifically limiting as the old. The danger would be eliminated if the new language read: "by reason only of * * *."

The clause (b) in the second sentence simply states specifically what the Commission, by a regulation, has already interpreted clause (a) to include.

Clause (c), together with the preceding elimination in the section to which I have referred, effects the change which would eliminate the old-fashioned type of underwriter from liability. I would also point out that it effects the impractical result of having the status of an underwriter depend ex post facto upon whether the underwriter may or may not sell any part of the commitment which he takes up within 6 months.

Clause (d) simply states specifically what the Commission has consistently recognized to be a proper interpretation of the existing provisions of section 2 (11).

Clause (e) appears particularly dangerous. It is entirely unnecessary unless the recommendation for the purchase, sale, or exchange of a security is made by a person who is purchasing from or selling for an issuer in connection with distribution; while in such case an underwriter certainly should not be allowed to escape from his responsibility by reason of lack of proof of his compensation. Under the proposed language it might very likely be argued that an underwriter purchasing and reselling at a profit to himself was not receiving "compensation." Also, if an underwriter should sell as agent for an issuer or for another underwriter, it might be urged that he was not an underwriter if he received no commission directly from the issuer or other underwriter, although he should receive payment for his activities by reason of a commission from other sources.

2. AMENDMENT ADDING SECTION 3 (9)

This proposed amendment is in accordance with an interpretation which the Commission has already placed upon the existing language of section 4 (3) of the act, and to that extent is unobjectionable. Securities issued under the exemptions of the second clause of section 4 (1), however, should by no means be made exempted securities. To do so might give securities an exempt status by a transaction immediately preceding a public offering by one other than the issuer.

3. AMENDMENTS TO SECTION 4

The proposed amendment to section 4 (1) completely eliminates from the third clause thereof any duty of a dealer to furnish a prospectus in connection with the sale of a security within 1 year of its public offering. The trading activities of dealers, even though such persons are not to be classed as underwriters, are a very important factor in connection with the public distribution of a new security. It is indeed rare that an issue is sold directly to scattered investors either by the issuer or by an underwriter. Issuers and underwriters fully expect that a substantial part of the distribution of a new security will be carried out through the activities of dealers having no direct relation with them. Where a dealer undertakes to promote the distribution of a new issue, I believe that it is fully as important that he be required to furnish a prospectus conforming to the requirements of the Securities Act as it is that the issuer or an underwriter be required to furnish such a prospectus. I recognize that there has been some confusion and fear created by the present provision of the act which, in effect, requires that dealers must furnish a prospectus in connection with transactions "within 1 year after the last date upon which the security was bona fide offered to the public." Such a date might undoubtedly be practically impossible of ascertainment by particular dealers. I would, therefore, simply suggest a change in this provision so that the requirement relates to the first date upon which the security was offered.

The amendment to section 4 (2) strikes out the last clause of the present provision which withdraws from the exemption afforded by the provision the solicitation of orders by brokers. It is urged in the comments upon this proposal in the bar association report that the provision "does not tie up with the other provisions of the act" and that it merely creates confusion because of the fact that the act deals with sales of securities, whereas this provision would appear to restrict a principal-agent relation between a broker and his client. The act includes within the definition of a "sale" in section 2 (3) a "solicitation of an offer to buy a security." I do not, therefore, believe that the provision is inconsistent with the use of the term "sale" in the other provisions of the act, and I think it highly important that the act cover the activities of brokers who may be accomplishing the effective distribution of a new issue to the public. Brokers will, of course, be dealers, and the requirement for the furnishing of a prospectus imposed upon them where they solicit market orders will apply only to the extent that such a requirement is imposed upon dealers under section 4 (1).

The provisions for the amendment of section 4 (3) contained in the bill are substantially altered and less extensive than the proposals which were made in the bar association report. The change in the first clause of this section consists essentially in restricting the general language which prohibits the payment of a commission or other remuneration "in connection with" an exchange, so that only a commission or other remuneration paid "for soliciting" an exchange is forbidden. This is in accordance with the interpretation which the Commission has consistently applied to the general language now in the act, and I believe that the clarifying change is desirable. I wish to point out, however, that the bill (perhaps inadvertently, since the omission does not appear in the bar association proposal) has omitted the phrase "directly or indirectly" from the limitation against payment of remuneration. This phrase should certainly be left standing.

The second clause of section 4 (3) has been very materially changed by the proposed amendment. The change is apparently intended to extend the exemption therein contained to cover transactions in connection with various forms of court reorganizations, rehabilitations, and readjustments of outstanding securities, in addition to the issuance of securities under court supervision in connection with corporate reorganizations, to which the clause is at present limited. I am in sympathy with the apparent object of this amendment, but I do not believe that it has been properly framed, and, in particular, I desire to point out that the proposed language would actually remove entirely the requirement for court supervision over the issuance or the terms of issuance of the new securities. The provisions of the bill simply require that court proceedings be in progress. In such case any securities, including certificates of deposit issued by any protective committee, are made exempt if issued to security holders or creditors of the person which is, or the property of which is, the subject of the court proceedings. The entire basis of the exemption of the second clause of section 4 (3) rests upon the assumption that court supervision will be an adequate protection for investors in substitution for the registration requirements of the act. Such court supervision will, of course, afford protection only if the court actually supervises the terms of or the issuance of the securities. The proposed amendment contains no such requirement. I wish also to point out that the specific addition of a provision concerning certificates of deposit is unnecessary, since the existing language of the act fully covers such securities and has been so interpreted by the Commission.

There is added a final clause to section 4 (3) which would exempt the issuance of securities pursuant to a plan of reorganization or bona fide readjustment "promulgated prior to the enactment of this title." Such a provision is at most a clarifying addition to section 3 (a) (1) of the act and, if placed anywhere, should be added to that section. The provision, however, is entirely unnecessary, as section 3 (a) (1) fully covers such securities and has consistently been so interpreted by the Commission. I would point out that the proposal made in the bill is actually narrower than the exemption afforded by section 3 (a) (1), since the exemption of this last clause which would be added to section 4 (3) would apply only to securities issued pursuant to a plan promulgated prior to the enactment of the Securities Act of 1933, whereas section 3 (a) (1) covers any such securities under a plan promulgated "within 60 days after the enactment" of the act.

For your information I would point out that the bill has not included the proposal of the Bar Association report to add a new section 4 (4) to the act.

4. AMENDMENTS TO SECTION 11

The amendments to section 11 are substantial and are of two types. Certain of the amendments very materially modify and restrict the liability of various persons in connection with the

registration statement. Others of the amendments are primarily of a clarifying character.

Throughout section 11 several proposed changes would predicate liability only upon "an untrue statement of a material fact" and eliminate from the basis for liability the expression, "an omission to state a material fact required to be stated in the registration statement or necessary to make the statements therein not misleading." By the terms of the proposed section 11 (h) an untrue statement is defined so that, in effect, the omission of a material fact necessary to make the facts stated not misleading is retained, by definition, as a basis for liability. The elimination of any civil liability for an omission to state a material fact required to be stated in the registration statement is, nevertheless, carried throughout this section and is not reinstated by the definition in section 11 (h). As a result, the change would leave any violation of the requirements of a registration statement in the nature of an omission solely for stop-order proceedings by the Commission or criminal prosecution under section 24 if the omission should be willful. As a result, the responsibility for compelling a full compliance with the requirements of the registration statement would be thrust entirely upon the Commission and the salutary threat of civil liability on account of an omission of required material facts would be lost.

A change has been made in the opening paragraph of section 11 (a) which was not contained in the bar association report, whereby the right of a purchaser of a security to sue is removed if such person "in the exercise of reasonable care would have known that such statement was untrue." The section as it now exists negatives the purchaser's right of action only if it is proved that at the time of acquisition of a security he knew of the existence of the untrue statement complained of. The additional restriction on the right to sue proposed by the bill would open up a very large field for the defense of actions and I do not believe that an investor should be subjected to a duty of exercising reasonable care to discover an untruth or omission in the registration statement. This might well mean that no action would be successful unless the purchaser of the security had himself undertaken to investigate the accuracy of every statement made in a registration statement.

A slight change is contained in section 11 (a) (4) which appears to be purely clarifying, except insofar as it adopts the definition of an untrue statement proposed in section 11 (h).

Section 11 (b) of the bill is new. It contains the most important change proposed and inserts a requirement of reliance upon the registration statement or the prospectus in order that a purchaser may recover under most circumstances. Section 11 (b) (1) permits a suit against the issuer without the necessity of proving reliance if a security was purchased within 6 months after its sale by the issuer. Thereafter a suit against the issuer will be successful only if the purchaser sustains the burden of proof of showing that he purchased the security in reliance on the registration statement or on a prospectus which contained the untrue statement of a material fact which was contained in the registration statement. By section 11 (b) (2) the liability of underwriters is limited to persons who can sustain the burden of proving the purchase of a security from the underwriter sued or the purchase of a security in reliance upon a prospectus published over the name of the underwriter sued. Section 11 (b) (3) requires that the purchaser can successfully bring a suit against any persons other than the issuer or underwriters covered by section 11 (b) (2), i.e., directors, officers, experts, and such other underwriters, if the purchaser sustains the burden of proving that he purchased in reliance upon the registration statement or upon a prospectus containing an untrue statement contained in the registration statement. I do not believe that the requirement of reliance is consonant with the present-day methods of distributing securities in this country.

While the proposed section 11 (b) (1) would make an issuer absolutely liable if a purchaser could sustain the burden of proof that he purchased a security within 6 months after its sale by, and the receipt of consideration therefor by, the issuer, that period is, in my opinion, entirely too short, even if any limitation is to be placed upon the period of absolute liability. It very frequently requires more than 6 months fully to distribute a new issue. Purchases made after that time from underwriters or dealers should certainly remain subject to absolute liability of the issuer where such purchases are in connection with a distribution.

I am in sympathy with a part of the apparent object of the proposed section 11 (b) (2), insofar as it is directed to restricting the liability of an underwriter to that part of an issue underwritten by him. I do not, however, believe that this object should be attained upon the basis of a requirement of reliance. A limitation of liability may be accomplished otherwise, and the requirement of reliance, especially with the burden of proof upon the purchaser, will place altogether too hopeless a burden upon any attempt at recovery by the purchaser of a security.

The proposed section 11 (b) (3) imposes the requirement of proof of reliance upon the plaintiff wherever he attempts to hold a responsible person, such as a director, officer, or expert, who may have caused to be put into circulation a statement violating the requirements of the act. There is no real justification for imposing this added burden upon a plaintiff, suing such persons as against a suit against an issuer or an underwriter from whom the plaintiff purchased a security, and the only practical object of the provision is to relieve responsible persons of the major possibility of a successful action against them.

The proposed new section 11 (c), which is the present section 11 (b) of the act, contains only changes with respect to the definition of an untrue statement and eliminating an omission to state a required material fact as a basis for liability. With regard to these changes, my previous comments are applicable, and I cannot agree that such changes are desirable.

The present section 11 (c) of the act is eliminated by the proposed amendment. The present section 11 (c) fixes as the standard of reasonableness the standard required of a person occupying "a fiduciary relationship." This definition has apparently created considerable consternation, and I would be agreeable to a change which would state the meaning of a fiduciary relationship in commonly accepted legal terminology. I do not, however, believe that a definition of the standard of reasonableness as a fiduciary standard should be omitted from this section of the act.

The proposed section 11 (d) attempts to define what constitutes a reasonable investigation within the requirements of section 11. For the most part I think that this proposed section contains a superfluous reiteration of the standard of reasonableness under particular circumstances and to such extent it is objectionable only in the sense of being unnecessary. I believe, however, that the definition also goes too far in permitting responsibility for investigations to be passed on entirely to other persons than the person who might be the defendant to an action. This section has not expressed the fiduciary character of the standard of reasonableness which the act should contain.

The present section 11 (d) of the act has been omitted. As a result of this omission an underwriter becoming such after a registration statement is effective will assume no responsibility for the accuracy of the registration statement at the time he commences distribution of the securities registered hereunder.

Under the amendments to section 11 (e), an action for rescission is limited to suits against the issuer or against an underwriter from whom the plaintiff may have purchased. Against all other persons only damages may be recovered. I should not object to the elimination from the act of a statutory cause of action for rescission, and would be content to leave rescission actions to the principles of the common law and of equity.

The amendment to section 11 (f) removes any right of contribution from an issuer and any persons controlling the issuer and liable under section 15 of the act. It also makes the issuer absolutely liable to any persons against whom a recovery may be had under the act unless such person was guilty of "fraudulent misrepresentation." I do not consider these changes desirable.

The proposed section 11 (g) contains an express statement of the basis for damages which I believe is unobjectionable.

The proposed section 11 (h) contains a definition of "an untrue statement" and a definition of "a material fact." As I have previously pointed out, I believe that the definition of an untrue statement is little different from that which would result from the present language of the act, which predicates liability upon an untrue statement or an omission to state a material fact necessary to make the statements made not misleading. I do not think that the definition of a material fact is at all satisfactory, since it defines the word "material" in its own terms.

5. AMENDMENTS TO SECTION 12

The amendment to section 12 (1) of the act inserts the word "willfully." I do not at all believe that civil liabilities resulting from a violation of the act should be limited to cases where willfulness can be proved. Innocent misrepresentations are a well-recognized ground for actions of rescission at common law, and to provide that a violation of the act shall carry similar civil liability is entirely reasonable and most essential for the protection of investors.

By an amendment at the opening of section 12 (2), the bill would insert a limitation upon liability so that only a person selling for his own account would be liable for misrepresentations. A person selling as agent for another would incur no liability if he disclosed his agency. This would entirely remove all responsibility for misrepresentations from the very person making the misrepresentation in probably the great majority of instances.

The proposed new section 12 (2) would remove the meaning of a misrepresentation as described in the act and insert the meaning of an "untrue statement" as defined in the proposed section 11 (h). A requirement of reliance is further inserted in the section. The section also limits damages to those "caused by such violation or by such untruth." I do not believe that the element of causation to be added changes the meaning of the present section. There is added to section 12 a final sentence which specifically limits damages to the amount by which the consideration paid by the person suing is greater than the consideration received by the person suing. This is probably intended to express the ordinary rule of damages which would be applied by a court and to eliminate punitive damages, but I think the definition would be extremely dangerous, since it might be subject to the interpretation that payment of a price no greater than the current market value of a security at the time of a purchase would give rise to no damages.

6. AMENDMENTS TO SECTION 13

The proposed new section 13 reduces the period of limitation upon an action after discovery of an untrue statement or omission from 2 years to 6 months and reduces the period of limitation for the bringing of any action from 10 years to 6 years. I think the 6 months period after discovery, and particularly "after such discovery should have been made by the exercise of reasonable diligence" is entirely too short, when it must be recognized that a security issue might be distributed widely over the

country and actual knowledge of the discovery of a misrepresentation might be very slow to be disseminated. For the ordinary investor, also, the institution of suit within 6 months would be a very serious requirement. I do not believe that a 10-year general limitation is unnecessarily long in the light of the periods of limitation for actions of various types generally in force under the laws of the several States.

7. AMENDMENT TO SECTION 15

According to the Bar Association report, the proposed changes which are made in section 15 are intended to make that section applicable only to prevent the use of dummies in order to evade liability. I am wholly in sympathy with this object, but I do not believe that the proposed changes are well framed for this purpose alone. The changes proposed might very likely be interpreted so narrowly as to make it almost impossible to establish liability by a controlling person.

8. AMENDMENT TO SECTION 17

In the opening clause of section 17 (a) the bill adds the words "willful and with intent to deceive." The insertion of the word "willful" is superfluous, since this section creates criminal liabilities, and section 24 of the act requires that criminal liability shall be predicated only upon a willful violation. The phrase "with intent to deceive" is probably no more than reiterative of the requirements of subsections 1, 2, and 3, but I believe it unwise insofar as it might impose any limitation upon liability extending further than the present language of the section.

Section 17 (b) is changed by making it apply only to a notice which "does not" offer a security for sale instead of a notice "not purporting to" offer a security for sale. The change is probably not one of substance, but I believe that it offers a risk of a narrowing of the requirements of the section. The concluding clause of section 17 (b) has been changed so as to omit entirely any requirement for disclosure of the amount of any consideration received for the description of a security. It also omits a requirement of full disclosure. Both of these requirements in the present section are most vital, and their purpose is obvious.

A change which has been made in section 17, without any reference thereto in the Bar Association report, and which is extremely important and most undesirable, consists of the complete elimination of the present section 17 (c). Under section 17 (c) the exemptions of section 3 of the act do not apply to the provisions of section 17 (a) and 17 (b). Therefore, transactions with respect to securities which are designated as "exempted securities" under the act, are subject to these criminal liability provisions. I do not believe that any policies sustaining the exemptions of section 3 of the act can extend to exempting from liability willful wrongdoing of the character defined in section 17.

9. AMENDMENT TO SECTION 22 (A)

The proposed new section 22 (a) eliminates the concurrent jurisdiction of State and Territorial courts for the enforcement of the Securities Act. The frequent inaccessibility, burdensome procedure and added expense of Federal court proceedings, as against State court proceedings, makes this change undesirable.

10. AMENDMENT TO SECTION 24

The proposed section 24 of the bill has omitted between the word "willfully" and the word "makes" in line 17 the phrase "in a registration statement filed under this title." This omission is not suggested in the Bar Association Report and is probably inadvertent, since it makes the following language meaningless. Assuming the reinsertion of this phrase, the only change in the section is the omission of the phrase, "necessary to make the statements therein not misleading." Thus, the definition of an untrue statement is referred back to the new section 11 (h). In addition, as I have pointed out under section 11, the criminal penalties imposed by section 24 remain as the only penalties, aside from stop-order proceedings, for an omission to state a material fact required to be stated in a registration statement.

11. NEW SECTION 24 (a)

This provision is entirely inequitable, I believe, since it provides for compensatory damages only on behalf of a defendant where a plaintiff is unsuccessful. I would be inclined to favor a provision for compensatory damages if it should work equally in proper cases in the discretion of a court in favor of either a successful plaintiff or a successful defendant.

Sincerely yours,

J. M. LANDIS.

Hon. DUNCAN U. FLETCHER,
Chairman Senate Banking and Currency Committee,
Washington, D.C.

GENERAL LA FAYETTE MEMORIAL DAY

Mr. LONERGAN. Mr. President, I ask unanimous consent for the present consideration of House Joint Resolution 317, requesting the President of the United States of America to proclaim May 20, 1934, General La Fayette Memorial Day for the observance and commemoration of the one hundredth anniversary of the death of General La Fayette.

The VICE PRESIDENT. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution, which was ordered to a third reading, read the third time, and passed, as follows:

Resolved, etc., That the President of the United States is authorized and requested to issue a proclamation calling upon officials of the Government to display the flag of the United States on all governmental buildings on May 20, 1934, and inviting the people of the United States to observe the day in schools and churches, or other suitable places, with appropriate ceremonies in commemoration of the death of General La Fayette.

LOANS BY FEDERAL RESERVE BANKS TO INDUSTRIES

Mr. ROBINSON of Arkansas. Mr. President, in my judgment only a few more minutes will be required to dispose of the business which it is my purpose to bring to the attention of the Senate today. I move that the Senate proceed to the consideration of Order of Business 901, Senate bill 3487, relating to direct loans for industrial purposes by Federal Reserve banks, and for other purposes.

The VICE PRESIDENT. The question is on the motion of the Senator from Arkansas.

The motion was agreed to; and the Senate proceeded to consider the bill (S. 3487) relating to direct loans for industrial purposes by Federal Reserve banks, and for other purposes.

Mr. ROBINSON of Arkansas obtained the floor.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. ROBINSON of Arkansas. I yield.

Mr. BARKLEY. I offer an amendment to the bill, which I understand the Senator from Virginia [Mr. GLASS] is willing to accept.

The VICE PRESIDENT. There is an amendment pending at the present time. The Chair understands the parliamentary situation to be as follows: The banking bill (S. 3487) is now the pending business; and the amendment offered by the Senator from Oklahoma [Mr. THOMAS], known as the "silver amendment", is the pending question.

Mr. ROBINSON of Arkansas. Mr. President, the situation is that the amendment of the Senator from Oklahoma in the nature of a substitute for the amendment of the Senator from Louisiana [Mr. LONG] is the pending question.

The VICE PRESIDENT. That is the parliamentary situation, as understood by the Chair. The amendment offered by the Senator from Kentucky [Mr. BARKLEY], therefore, could not be considered at this time.

Mr. BARKLEY. I have no desire to offer my amendment until the other matters shall have been disposed of.

Mr. THOMAS of Oklahoma. Mr. President, when this bill was before the Senate on a previous occasion the senior Senator from Louisiana [Mr. LONG] offered an amendment. To that amendment I offered a substitute. The amendment and the substitute dealt with silver. Since that time there have been several conferences between Senators interested in the silver and money questions and responsible Government officials in Washington. While no agreement in detail has been reached, yet I feel that an agreement has been reached in principle, and because we have an agreement in principle, as I understand and verily believe, and with an understanding that at a later date it will be agreeable to the leaders of the Senate to call up for consideration House bill 7581, being the Dies bill, at which time, if an agreement shall have been reached with the Treasury Department, it will be the plan to offer the agreement that may be reached as a substitute for the text of the Dies bill—with that understanding, and reserving the right to reoffer the amendment to some other bill, if no agreement shall be reached, I desire at this time to withdraw my amendment in the nature of a substitute.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the amendment is withdrawn.

Mr. THOMAS of Oklahoma. Mr. President, I sent a telegram to the senior Senator from Louisiana [Mr. LONG], inasmuch as he offered the amendment proposing to incorporate part 2 to the pending bill. I have no reply from the senior Senator from Louisiana, but I think I know of his interest, and I think that if he were here he would agree to the suggestion which I will make, and that is that this

agreement, as I have stated it, be the understanding of the Senate; that, if the agreement shall be reached, at an opportune time we will have a chance to call up the Dies bill and consider it, and if no agreement shall be reached at some time before the session closes, the amendment will be offered to some other bill to which it will be germane. With that understanding, I am going to ask unanimous consent to withdraw, in the name of the Senator from Louisiana, the substitute or amendment offered by him.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the amendment is withdrawn.

Mr. BARKLEY. Mr. President, I offer an amendment.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. At the end of the bill it is proposed to add the following:

That the Reconstruction Finance Corporation Act, as amended (U.S.C., supp. VII, title 15, ch. 14), is amended by inserting before section 6 thereof the following new section:

"SEC. 5d. For the purpose of maintaining and increasing the employment of labor, when credit at prevailing bank rates for the character of loan applied for is not otherwise available at banks or at the Federal Reserve bank of the district in which the applicant is located, the Corporation is authorized and empowered to make loans to any industrial or commercial business established prior to January 1, 1935. Such loans shall in the opinion of the board of directors of the Corporation be adequately secured, may be made directly, in cooperation with banks or other lending institutions, or by the purchase of participations, shall have maturities not to exceed 5 years, shall be made only when deemed to offer reasonable assurance of continued or increased employment of labor, shall be made only when, in the opinion of the board of directors of the Corporation, the borrower is solvent, shall not exceed $250,000,000 in aggregate amount at any one time outstanding, and shall be subject to such terms, conditions, and restrictions as the board of directors of the Corporation may determine. The aggregate amount of loans to any one borrower under this section shall not exceed $1,000,000.

"The power to make loans given herein shall terminate on January 31, 1935, or on such earlier date as the President shall by proclamation fix; but no provision of law terminating any of the functions of the Corporation shall be construed to prohibit disbursement of funds on loans and commitments, or agreements to make loans, made under this section prior to January 31, 1935, or such earlier date."

Mr. BARKLEY. Mr. President, this amendment is the language of a bill unanimously reported by the Committee on Banking and Currency, which the Senator from Virginia, I think, is prepared to accept.

Mr. GLASS. Mr. President, the bill having been reported unanimously, as the Senator from Kentucky has stated, I feel justified in accepting the amendment.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Kentucky [Mr. BARKLEY].

The amendment was agreed to.

Mr. BONE. Mr. President, I offer an amendment to the pending bill. I may say that I desire to offer the amendment not in the form in which it is printed but to offer that part of it down to and including line 4 on page 2, omitting the last two lines on the second page.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. It is proposed, on page 1, line 6, to strike out "In exceptional circumstances" and insert in lieu thereof "For the purpose of maintaining and increasing the employment of labor."

On page 2, lines 3 and 4, to strike out "for the purpose of providing it with working capital"; and in line 6, before the period, to insert a comma and the following:

"for the following purposes: To provide it with funds for working capital, for reducing and refinancing outstanding indebtedness if such refinancing is concurrent with a substantial write-down of such outstanding indebtedness, for rehabilitating and making improvements to plants, for reopening plants not in operation on the date this section takes effect, and for new buildings and new machinery."

Mr. BONE. Mr. President, I will occupy but very little time on this amendment. For some reason, which probably seems best to them, the R.F.C. Board has adopted a set of rules which have made it difficult, if not impossible, for that body to provide adequate financing for industrial plants. The section of country from which I come is notoriously undercapitalized. I have examined the record of the R.F.C., and the number of loans made to industries is, I may say, regrettably small, and their amount is likewise small. I found a statement in the New York Times of April 20 in which Mr. Jones said that the R.F.C. was doing everything in its power to expend loans to industry made through community mortgage-loan companies which groups of industries form.

He said:

One hundred and fourteen loans, aggregating $11,786,250, had been authorized; but of this little had been disbursed.

Unless there be a broadening of the policy of the R.F.C., or the rules under which the Federal Reserve banks are permitted to make loans are relaxed, there is little or no hope for private industries in the West receiving loans of the character to which they seem clearly entitled and which, I believe, they must have if they are to have any real relief.

I submitted a copy of this amendment to the Senator from Virginia a short time ago, but I do not know whether he has had time to examine it.

I did not have time to read the amendment of the Senator from Kentucky [Mr. BARKLEY], which was just submitted and which was adopted, and I am not certain whether that amendment covers the ground I have attempted to cover by my amendment. If it does, I shall be very happy. I should like to have the Senator from Kentucky advise me as to that.

Mr. BARKLEY. Mr. President, the amendment which I suggested, and which was adopted, authorizes the Reconstruction Finance Corporation to make loans to industries where they are unable to obtain them under the provisions of the Glass bill as it was originally reported by the committee. In other words, it makes it necessary for any industry seeking direct loans from the Reconstruction Finance Corporation for working capital or for purposes contemplated in the amendment, which is the same as the bill reported a few days ago from the committee, to show that they have made every effort to obtain credit from member banks or from the Federal Reserve banks, as provided in the bill of the Senator from Virginia [Mr. GLASS], and in the case of making such showing the Reconstruction Finance Corporation is authorized to make direct loans to the industry.

Mr. BONE. I should like to make a further statement before I take my seat. It is an expression of opinion, but I find a great many people in public life agree with this viewpoint. I think the Government might be more helpful in this crisis if it was willing to accept a 10- or even a 20-percent loss in the case of loans made to industry in an attempt to spiral upward the industrial trend, than to refuse such loans while it is pouring out millions and hundreds of millions of dollars in C.W.A. work from which it gets no return at all. I want the relief work to continue until its necessity disappears, but I also want to see the rule relaxed either with respect to the Federal Reserve banks or the R.F.C. and have Uncle Sam take at least some little chance of getting back 75 to 100 percent of his money. Under the present set-up very little relief is given to certain industries which I think are clearly entitled to such loans.

Mr. LEWIS. Mr. President, I wish to withdraw an amendment, and to state why I do so, with the indulgence of the able Senator from Virginia [Mr. GLASS], in charge of the bill, and the distinguished Senator from Kentucky [Mr. BARKLEY], who has just tendered an amendment which has been adopted. I find that an amendment proposed by myself, which I was anxious to press, and which had for its object a provision that would take care of the prospective needs of the Chicago school teachers as an organization of commerce and business based on real-estate ownership, which, under the law, is allowed, has been covered by the thoughtfulness as well as the agreement of the eminent members of the committee. I wish to say that I accept the amendment as tendered, and the proposition also presented by the Senator from Virginia and the Senator from Kentucky, and beg to withdraw the amendment I had proposed touching this subject on the ground that it is now unnecessary.

The VICE PRESIDENT. The Senator from Illinois withdraws his amendment.

Mr. GLASS. Mr. President, I could wish that the Senator from Washington [Mr. BONE] would also withdraw his amendment and let us pass this bill, in response to the very urgent appeals from all over the country. This bill embarks the Federal Reserve System upon an entirely new and experimental form of loans. Under the existing system, the discounting bank at the Federal Reserve bank has to assume 100-percent responsibility. Now we are proposing to make a different kind of loan, and we require the financial institution obtaining the accommodation directly from the Federal Reserve bank, instead of from the member bank, to assume at least 20 percent of the loss, or in lieu thereof to put up 20 percent of the fund sought. It seems to me, as it seemed to the committee unanimously, that that was a very reasonable requirement, and I hope the Senator from Washington——

Mr. BONE. Mr. President, will the Senator yield?

Mr. GLASS. Yes.

Mr. BONE. May I invite the attention of the Senator from Virginia to the fact that I struck out the last two lines in the amendment offered by me which left in the 20-percent provision. I felt if the amendment was to be offered that that provision should be presented separately.

Mr. GLASS. I had not noted that, but the real purpose of this bill is similar to that of the Senator's amendment. It ought only to apply in exceptional circumstances. Where there is a proposed borrowing for a going industry in order to retain employment of those engaged in the industry and in order to increase employment by the expansion of industry, where they cannot get credit accomodations at current bank rates, then they may borrow directly from the Federal Reserve banks. I think the bill ought to be safeguarded in some particulars. The committee thought so too and reported the two bills unanimously. I hope they may be passed. I hope, therefore, that the amendment offered by the Senator from Washington may either be withdrawn or rejected.

The VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from Washington.

The amendment was rejected.

Mr. VANDENBERG. Mr. President, since the amendment of the Senator from Kentucky [Mr. BARKLEY] just adopted undoubtedly withdraws from the Senate all immediate opportunity to consider use of the Reconstruction Finance Corporation facilities for the further and extended advantage of the American people, I have no alternative but to offer at this point an amendment which I contemplated offering to the second bill which the Senator from Kentucky has attached to the Glass bill as an amendment. None of us knew until 10 minutes ago that this second bill would be disposed of in this quick fashion, and in this summary way this afternoon.

It seems to me it would be exceedingly unfortunate if this session of Congress were to be concluded without effective additional consideration of legitimate-depositor relief in respect to closed banks. I am not talking about the so-called "McLeod bill" which remains in the House, because it seems probable that this bill may not reach the Senate at this session.

I am talking about some such measure as that which was submitted by the Senator from New York [Mr. COPELAND] a few days ago, and I am talking about the proposal with reference to which I have been in consultation with the Treasury and officers of the Reconstruction Finance Corporation during the last week. Unfortunately, the matter now comes to an issue here in the Senate before I can have conclusive reports from the Treasury and the Reconstruction Finance Corporation, and I have no alternative except to offer, in cooperation with the senior Senator from New York [Mr. COPELAND], and in our joint behalf the amendment which I now tender. I submit a proposal which will release heavy additional liquidating dividends to depositors, and yet it will not risk the public credit in respect to prospective loss.

The amendment is a very simple matter. It proceeds upon the theory that the Reconstruction Finance Corporation should be directed to lend to receivers of banks and kindred liquidating offices the full appraisal value of the assets which are held by the Reconstruction Finance Corporation behind those loans. It proceeds upon the theory that the Government has not discharged its full obligation to the bank depositors of this country until it has exhausted every rational recourse to recoup these depositors who trusted these banks and the Government's persistent warrant as to their solvency. It asks recognition for these depositors' rights.

At the present time the Reconstruction Finance Corporation is lending only from 60 to 75 percent of the values in this collateral behind these bank liquidation loans. The appraisals were made in the main a year ago. They should be remade. The appraisals are utterly conservative. The margin of safety is wider than necessary and the rates of interest on these loans are indefensively high. The margin of safety which would be left even if the Reconstruction Finance Corporation were directed to make loans at the rate of 100 percent of the liquidating value of the assets behind the loans as I suggest would still be ample. The margin of safety would be covered by the prospective recovery values of the future plus the stockholders' liability and plus the judgment of the Reconstruction Finance Corporation in respect to the appraisals. We owe the bank depositors of the country this minimum consideration at the very least. This is not a radical plan. It is absolutely sound. It is just. It is the discharge of a public obligation. It is currency expansion of the most direct and practical sort.

Mr. President, I am offering the amendment in behalf of the senior Senator from New York [Mr. COPELAND] and myself. I send the amendment to the desk.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. It is proposed to add a new section to the bill, as follows:

That the Reconstruction Finance Corporation Act is hereby amended by adding at the end of paragraph 1 of section 5 the following sentence:

"Notwithstanding any other provisions of law with respect to all loans as aforesaid to receivers or liquidating agents for banks and savings banks that are closed or in process of liquidation, the Corporation shall loan 100 percent of the fair estimated liquidating value of the assets tendered as security for such loans, and shall charge interest thereon at a rate not to exceed 3 percent per annum."

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Michigan.

Mr. BARKLEY. Mr. President, I merely want to say that this is a proposal which the Committee on Banking and Currency has had no opportunity to consider. No one knows what the effect would be on the Treasury or upon the funds of the Reconstruction Finance Corporation; and certainly it ought not to be adopted.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. VANDENBERG. I did not hear the Senator object to the consideration of the amendment of the Senator from Florida [Mr. FLETCHER] to the Securities Act on the theory that the committee had not had an opportunity to consider it.

Mr. BARKLEY. That would not have been true if I had made that observation, because the committee did consider it very carefully and in detail.

Mr. VANDENBERG. The committee also has had depositor-relief legislation before it for 3 months and has given it no consideration. There is not much time left. We cannot wait indefinitely for committee action. Depositors themselves already have waited too long. They deserve at least the fullest possible and immediate use of the maximum value of the assets which represent their deposits. If we wait for the committee, I fear we shall wait in vain..

Mr. BARKLEY. We have given consideration to urgent legislation through conferences with the Chairman of the Federal Reserve Board and the Chairman of the Reconstruction Finance Corporation. For many weeks there has been pending in the other body of the Congress a bill, in-

troduced by a Member of that body from the Senator's State, which has received wide publicity. No action has been taken upon it. Certainly it is not quite in keeping with the proper deliberation of matters of legislation of this kind to bring an amendment before the Senate which has never been considered by the committee or reported on by any official of the Treasury or other department of the Government and which requires a 100-percent loan upon the assets of closed banks. I think the amendment certainly ought to be rejected.

Mr. VANDENBERG. Would the Senator object to taking the amendment to conference for consideration with those officials?

Mr. BARKLEY. Yes; I object to it's being adopted for any purpose. I do not think it ought to be adopted without the effect of it being known.

Mr. VANDENBERG. The Senator understands he has misstated, though I am sure inadventently, the purport of the amendment. It is not a 100-percent loan against the assets of the closed banks. It is a 100-percent loan against the Reconstruction Finance Corporation's own appraisal of what the assets may be worth. Could this challenge in behalf of bank depositors be reduced to more modest terms?

Mr. BARKLEY. I did not intimate it was 100 percent of the face value of the assets.

Mr. COPELAND. Mr. President, one who has had any experience in connection with the reopening of closed banks, as many Senators have had, must realize that the hard and fast rules which prevail in realizing on assets of closed banks have interfered seriously with the reopening of the banks and the restoration of business. What I have in mind is the experience I have had many times during the past year in my State where those of us who have been familiar with the locality and with the individuals who have made loans in the banks and with the assets back of them, have been convinced that in many instances those assets in the long run are worth 100 cents on the dollar. They have not been so treated by the Reconstruction Finance Corporation or by the Treasury.

I believe that the wording of the amendment, which was prepared by the Senator from Michigan who has courteously included my name in the authorship, is a perfectly safe one. It provides merely that "the corporation shall loan 100 percent of the fair estimated liquidating value of the assets tendered as security." It is not proposed to take "cats and dogs" and lend money on them. It is simply a question of taking assets which in all human probability are worth 100 cents on the dollar, but which have not been so treated by the operation of the laws as applied in the past.

I think the committee might well consider taking the amendment to conference, because it is in the interest of humanity, in the interest of the stockholders of the banks, in the interest of the various communities which have suffered because of a deprivation of banking facilities. I hope the committee may be willing to take the matter to conference to see if some plan cannot be worked out to give the protection in the direction indicated.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Michigan.

Mr. GLASS. Mr. President, I think I may say for the chairman of the committee—who perhaps is too tired to say anything for himself, after the arduous duties that have been imposed upon him—that the Committee on Banking and Currency is perfectly willing to consider this matter, but it is not willing to have too much legislation go to the conferees.

As a matter of fact, if the distinguished Senator from Michigan will examine the existing Bank Act of 1933, he will see that we there authorized primarily the Insurance of Deposits Corporation to loan money to buy the assets and to wind up and liquidate the business of closed banks. They have already acquired a fund of something over $300,000,000 for that purpose; and if there is any urgent reason for doing anything of the kind, that Corporation, organized 6 months ago, could give it attention. I do not think we ought to embark upon a proposition of this kind, about which the committee has not heard anything whatever. It has not had a report from the Treasury, from the Comptroller of the Currency, or from the Reconstruction Finance Corporation, having charge of these matters.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. GLASS. Yes; I yield.

Mr. COPELAND. The trouble in the application of the law as it is at present has been that in the consideration of the assets of the bank, consideration has been given to the immediate value, the immediate liquidity of those assets. Here it is proposed that consideration shall be given to the possible value of the assets over a reasonable length of time. It is all left to the administrative officers of the Government.

Mr. GLASS. No; I will say to the Senator that under the existing law the transactions are not confined to the immediate assets of the banks, but the matter is left to the determination of the Insurance Corporation Board.

Mr. COPELAND. But, as a matter of fact, I may say to my friend, the only consideration that has been given, in the experience I have had with half a dozen banks in my State, is to the immediate value of the assets.

Mr. GLASS. That may be so in regard to a half dozen banks; but we ought not to pass legislation of this grave importance without knowing exactly what we are doing.

I hope very much the amendment will not be adopted.

The VICE PRESIDENT. The question is on the amendment of the Senator from Michigan [Mr. VANDENBERG].

The amendment was rejected.

Mr. JOHNSON. Mr. President, I understand that there has been presented by the Senator from Kentucky [Mr. BARKLEY] an amendment which attaches to this bill, the Reconstruction Finance Corporation loan bill.

Mr. BARKLEY. Yes; that is true.

Mr. JOHNSON. I have an amendment which I wish to present to that bill. I did not intend to attach to the bill of the Senator from Virginia an amendment of any kind or character; but, inasmuch as this short cut to legislation is taken—of which I do not at all complain—I wish to present an amendment which I have just been advised is appropriate to the Reconstruction Finance Corporation loan bill.

Mr. GLASS. I will say to the Senator from California that there was no short cut here.

Mr. JOHNSON. I am not complaining of it.

Mr. GLASS. Both of these measures—the bill bearing my name and the amendment presented by the Senator from Kentucky—were carefully considered for days by the Banking and Currency Committee, and both of them were unanimously approved.

Mr. JOHNSON. I am not complaining of the mode of legislation; but I did not assume that to the bill of the Senator from Virginia the bill relating to the loans of the Reconstruction Finance Corporation, a separate measure entirely, would be attached. That is the matter to which I referred.

Mr. GLASS. I may say to the distinguished Senator that it was attached only because it is supplemental to the bill presented by me. I may say to the Senator also that two other bills involving amendments to the Reconstruction Finance Corporation Act will be presented at an early day, perhaps early next week, from the Banking and Currency Committee; and the Senator then will have an opportunity to propose his amendment.

Mr. JOHNSON. No; the amendment I desire to submit is an amendment that is appropriate to the bill which relates to loans made by the Reconstruction Finance Corporation. It has been considered by a subcommittee of the Banking and Currency Committee, and on one occasion I appeared before the subcommittee—I am saying this in explanation to the Senator from Virginia—but the subcommittee has not yet acted concerning it because of the limitations of time, as I understand. It is a bill which is of extraordinary importance to the particular locality from which I come and of importance as well to other sections.

Mr. President, I offer as an amendment to the bill—I assume it must be so offered, although properly it is an amendment alone to the amendment which has been, as I

understand, presented by the Senator from Kentucky [Mr. BARKLEY]——

Mr. BARKLEY. Mr. President, I will say to the Senator from California that his amendment is on a different subject and does not have to be offered as an amendment to the amendment which I have offered, and which has been agreed to. It can be offered as a separate section if the Senator so desires. It need not be attached to the amendment.

The VICE PRESIDENT. In order to offer an amendment to the so-called "Barkley amendment", it will be necessary to reconsider the vote by which that amendment was agreed to.

Mr. BARKLEY. The Senator from California can offer his amendment as a separate proposition.

The VICE PRESIDENT. He can.

Mr. BARKLEY. It has no relationship to the kind of loans referred to in the amendment offered by me.

The VICE PRESIDENT. The Senator from California can offer his amendment now as an amendment to the bill.

Mr. BARKLEY. He can offer it as section 7 of the bill.

Mr. JOHNSON. Mr. President, if the Senator will pardon me, I do not care how the amendment may be offered so long as it may be offered and may be considered by the Senate.

Mr. BARKLEY. My point is that it is unnecessary to reconsider the vote by which my amendment was agreed to.

The VICE PRESIDENT. That is correct.

Mr. BARKLEY. The Senator from California can offer his amendment independently.

Mr. JOHNSON. That is quite so; but it is an appropriate part of the amendment of the Senator from Kentucky. I did not think it was so appropriate to the bill of the Senator from Virginia, so I have not at any time thought of offering it as an amendment to his bill.

Mr. President, I may have been utterly in error. If so, I apologize to those who are here. When I left the Chamber for a very brief period I was laboring under the delusion that the bill of the Senator from Virginia [Mr. GLASS] was to be put before the Senate, and that it would with very little debate, probably, be passed. I had no interest in that bill save to see that it was passed, and to aid as well as I could in that regard. I had not the slightest conception that the bill relating to loans by the Reconstruction Finance Corporation was to be made a part of the bill of the Senator from Virginia. I do not deny the right of anybody to make it a part, but I had no conception that it was to be a part, and supposed that when the bill was called upon the calendar regularly I should have an opportunity to present this amendment. Indeed, when the calendar was called the other day, and the Senator from Florida asked that the Reconstruction Finance Corporation bill be taken up, I announced the fact that an amendment would be offered to that bill, and that it was my desire to be heard upon the amendment, and to have the amendment passed upon by the Senate.

Now, as the Senator from Kentucky had a right to do, at a time when there was no warning at all of the fact that the bill was coming up today, he presented the bill as an amendment to the bill of the Senator from Virginia. That is what makes the situation perplexing, and causes the peculiar circumstance in which I find myself.

Mr. BARKLEY. Mr. President, if the Senator will yield, I have no recollection of knowing that the Senator had taken that course, except that today I was told that the Senator had offered an amendment the other day.

When this bill was reported out of the Committee on Banking and Currency I stated that it was my purpose to offer it as an amendment to the Glass bill, because they are companion measures. They supplement each other. There is no complexity here. The Senator has a right to offer his amendment.

Mr. JOHNSON. Yes; I shall do so.

Mr. BARKLEY. There is no trouble about the Senator's offering the amendment. I will say that my action in offering my amendment was not based upon any desire at all to cut off the Senator. I though it was the best method of legislating. I thought originally that these two bills—the original Glass bill and the Reconstruction Finance Corporation bill—ought to be combined. They were combined when first introduced. Then it became necessary to consider the Reconstruction Finance Corporation prong of the matter a little more deliberately than the other. So the committee voted out the Glass bill first, and this bill second; and what I have done here is again to join them together as they were joined when first introduced by the Senator from Florida.

Mr. JOHNSON. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER (Mr. CONNALLY in the chair). The Senator from California offers an amendment, which will be stated.

The CHIEF CLERK. It is proposed to insert in the bill at the proper place, as a new section, the following:

That the Reconstruction Finance Corporation is authorized to make loans, for periods not exceeding 20 years, to finance the acquisition of any system, plant, or works for the production, transmission, or distribution of electrical energy by such public corporations, bodies, or instrumentalities as are referred to in section 201 (a) (1) of the Emergency Relief and Construction Act of 1932 which enter into contracts with the United States or any department, agency, or instrumentality thereof for the purchase of electrical energy, or for the use of any property, rights, or facilities employed in the production, transmission, or distribution of electrical energy. No loan shall be made except with the approval of the department, agency, or instrumentality of the United States with which such contract is entered into. The provisions of title II of the Emergency Relief and Construction Act of 1932, as amended, and of acts supplementary thereto, applicable to loans to such public corporations, bodies, or instrumentalities, so far as consistent with the terms hereof, shall apply to loans made under the terms of this act.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from California [Mr. JOHNSON].

Mr. JOHNSON. Mr. President, I ask if the amendment cannot be accepted. In order to save time, so that I shall not be bothersome on a bill which I should like to see passed, I ask whether it is not possible for the Senator from Kentucky to accept my amendment.

Mr. BARKLEY. Mr. President, I will say to the Senator that, as he suggested awhile ago, the Senator from Ohio [Mr. BULKLEY]——

Mr. JOHNSON. This is not the amendment of my colleague [Mr. MCADOO].

Mr. BULKLEY. I was misinformed.

Mr. JOHNSON. This is not the same amendment at all.

Mr. BARKLEY and Mr. GLASS addressed the Chair.

The PRESIDING OFFICER. The Senator from California has the floor. Does he yield; and if so, to whom?

Mr. JOHNSON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Copeland	Johnson	Patterson
Ashurst	Couzens	Kean	Pope
Austin	Dill	Keyes	Reynolds
Bachman	Duffy	King	Robinson, Ark.
Bailey	Erickson	La Follette	Schall
Bankhead	Fess	Lewis	Sheppard
Barbour	Fletcher	Logan	Shipstead
Barkley	Frazier	Lonergan	Steiwer
Black	George	McCarran	Stephens
Bone	Gibson	McGill	Thomas, Okla.
Borah	Glass	McKellar	Thomas, Utah
Bulkley	Goldsborough	McNary	Thompson
Bulow	Gore	Metcalf	Trammell
Byrd	Hale	Murphy	Tydings
Byrnes	Harrison	Neely	Vandenberg
Capper	Hastings	Norbeck	Van Nuys
Carey	Hatch	Norris	Wagner
Clark	Hatfield	Nye	Walcott
Connally	Hayden	O'Mahoney	Walsh
Coolidge	Hebert	Overton	Wheeler

Mr. LEWIS. Mr. President, I desire to announce the absence of the Senators whose names I have heretofore given, and the reasons for their absence as heretofore stated, to which I add the name of my colleague [Mr. DIETERICH], called to his State on official business.

The PRESIDING OFFICER. Eighty Senators having answered to their names, there is a quorum present.

The question is on agreeing to the amendment offered by the senior Senator from California [Mr. JOHNSON].

Mr. JOHNSON. Mr. President, may I have for a very brief period the attention of the Senate to this amendment, first apologizing for taking up the time of the Senate with respect to it, and stating that, so far as I am concerned, it is now before the Senate by reason of the facts which I detailed before the quorum call was made.

This little amendment authorizes the Reconstruction Finance Corporation—

To make loans for the production, transmission, or distribution of electrical energy by such public corporations, bodies, or instrumentalities as are referred to in section 201 (a) (1) of the Emergency Relief and Construction Act of 1932 which enter into contracts with the United States through any department, agency, or instrumentality thereof for the purchase of electricity—

And so forth.

The amendment is safeguarded by every provision which now attaches to loans which are made by the Reconstruction Finance Corporation.

It is, let me first emphasize, a mere authorization to the Reconstruction Finance Corporation. It is not mandatory, but it confers on the Reconstruction Finance Corporation the right, only if it sees fit, to grant the loans which are asked. It provides that such loans may be made to those public agencies which are today really customers of the United States, and, being customers of the United States, it asks that loans may thus be made to enable them to acquire the plants or works of another corporation.

Concretely, I may be able to make plain just the reason for this measure. The bureau of water and power of the city of Los Angeles is a public utility owned by the municipality. It furnishes to the people of the city of Los Angeles water and power, and has been a very successful institution. It is now something over 20 years old. It has grown with the years, and grown with the city, and grown with the territory until it is today a very remarkable instance of a publicly owned, municipally operated public utility, furnishing water, light, and power to the citizens of that great community.

The Boulder Dam, as Senators will recall, is a structure now in process of completion under the aegis of the Government of the United States. The act which created the Boulder Dam project required that before there could be any expenditure on the part of the United States Government, the Government had to have firm contracts for the sale of its electrical power, which would ultimately pay every dollar which might be expended by the Government of the United States on that great undertaking at Boulder Dam. It is one of the projects which are being paid for and will be paid for out of the electricity and water generated by the project itself.

The chief contracting party with the Government of the United States for power delivered and generated at Boulder Dam is the bureau of water and power of the city of Los Angeles. So that the public agency which now furnishes water and power to the city of Los Angeles is in this peculiar relationship, as well, with the Government of the United States in being the United States Government's chief customer for the power generated at Boulder Dam.

It happens that in the city of Los Angeles there are private power companies as well as this publicly operated institution. One of the private power companies is situated in one of the parts of the city of Los Angeles, and it parallels the lines of the publicly owned utility, so that a portion of the city of Los Angeles, 60 percent in reality, is served with electricity by the bureau of water and power and the other portion, 40 percent, by a privately owned utility.

Necessarily, in the first place, this situation is uneconomic. Necessarily, in the second place, it leads to controversy and difficulty. There has been constant bickering between the privately owned power company and that which is operated by the municipality, the publicly owned power company.

Recently the two have come together, so that the city may acquire, if it be possible, the privately owned company. Thus the controversies which have existed in the past will be eliminated; uneconomic methods of furnishing the people of that particular territory with electric power will be done away with as well; and the city, with its bureau of water and power, may do all the business that is required to be done in that whole territory.

It happens, of course, that in these days the bonds of the bureau of water and power cannot be sold with profit, and, I imagine, can hardly be sold at all. It is in most excellent financial shape. No one questions its solvency in the slightest degree; if it shall do what it desires to do, and what the privately owned utility wishes to do, it is essential that it obtain the money to make the trade which the private utility and the public utility are ready to make at this time and thus aid all parties and have an economically sound arrangement in that particular part of the city of Los Angeles.

That, concretely, is one thing which it is desired shall be done by this bill.

Is there any logical reason on the face of the earth why the Reconstruction Finance Corporation should not make a loan that is perfectly safe and sound, the making of which is left wholly in its discretion, under circumstances such as I have detailed? I fail to see that there can be any objection logically, legally, from any standpoint of any kind or of any character at all, to the making of such a loan.

Mr. LEWIS. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. LEWIS. I should like to have a statement from the Senator from Califorpia as to what reason now exists if the security is good—as perhaps it is—why the Reconstruction Finance Corporation cannot now—under the present law—make such loans. I understand they have made similar loans in the past.

Mr. JOHNSON. No; I understand they have no power to make such loans. It is the assertion of the Reconstruction Finance Corporation that they have no power to make them. That is the reason for this proposed legislation.

Mr. LEWIS. It is the theory that they have no power; and is this amendment to give power where under the old law it does not now exist?

Mr. JOHNSON. The R.F.C. says the power does not exist. That is their assertion; and, necessarily, we have to bow to that assertion. I am endeavoring to remedy what thus they say exists.

It is not alone this particular territory that is interested. Since the bill has been pending I received a letter from Mr. Lilienthal, of the T.V.A. That is the Tennessee Valley Administration; is it not?

Mr. BARKLEY. The Tennessee Valley Authority.

Mr. JOHNSON. Yes; it is conducting the Muscle Shoals project. I was surprised to find from his letter that he was interested in the bill, although I did not know it when the bill was introduced, and he is very anxious for it to pass. I think other localities are interested in it as well.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. BARKLEY. As a matter of equity and of justice to all sections of the country, what is the justification for the framing of a law which will allow Los Angeles, or any other community that happens to have a contract with some governmental agency, to borrow money for the purpose of constructing a public-utility plant and deny to the people of every city which may want to construct a public-utility plant the right to borrow money from the R.F.C. for that purpose? Why does the existence of a contract with the Government or some agency of the Government give such a community a sacred right to borrow money from the Government while it is denied to all other communities which might, regardless of any contract, wish to embark upon the construction of public-utility plants?

Mr. JOHNSON. That is a perfectly legitimate question, I grant. The Senator is quite right. There is no sacred right in that; but it does make the situation a little clearer and a little better, and it does curtail to a minimum the loans which may be made. It is quite true, as well, that a particular corporation or a particular entity which stands in a relationship to the United States Government, and is con-

tracting with it, may have a little better reason for a loan to be made to it than some other.

Let the measure be broadened if the Senator desires. I am not objecting to broadening it. I have limited it just as much as I could in order to meet and relieve every objection that may be made.

When the bill was first presented someone said, "It will take so much money to do this; and there is not any reason why the Government, in a case where it is not interested, should do a thing of this sort." That is the reason why the qualifying clauses will be found in the bill—first, because they answer the objection that it will take too much money; and, second, they answer the objection that the Government is not interested, because the Government is interested today in the contracts that it has made with any agency, for power or otherwise.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. BARKLEY. I see no limitation in the amendment as to any amount of loan that may be made, if one should be made. To what did the Senator refer when he said he had hedged the amendment about with limitations?

Mr. JOHNSON. The latter limitation which the Senator spoke of as a sacred right; the limitation that it was dealing with the United States Government in a contractual relationship.

Mr. BARKLEY. In other words, the situation is that the Government has provided the money for the construction, we will say, of Boulder Dam, which in turn is to furnish power to the city of Los Angeles?

Mr. JOHNSON. Oh, no; not that alone.

Mr. BARKLEY. Of course it has a good many other purposes.

Mr. JOHNSON. It has a good many other purposes—power and other things.

Mr. BARKLEY. What the Senator is really asking is that the Government also loan the city of Los Angeles the money which will enable it to take advantage of the facilities the Government is building at Boulder Dam?

Mr. JOHNSON. I am asking no such thing, and the amendment admits of no such construction. I am asking that the Government be permitted to make loans of the character indicated in the amendment; and in order that Senators might understand the situation exactly I put forward the concrete example in which I am deeply interested.

Mr. BARKLEY. Of course, I appreciate that; but, as a matter of fact, if the Government were not building the dam at Boulder Canyon there would be no occasion for the legislation which the Senator is seeking, because it would not apply.

Mr. JOHNSON. There might be no occasion for the legislation with respect to the city to which I have referred, but there might be occasion for it with relation to projects in the Northwest, in relation to the T.V.A., and the like.

Mr. BARKLEY. Yes. That still bears out my suggestion that the ultimate object is to allow communities to borrow money in order to take advantage of the facilities which the Government is erecting in the sections where those communities are located.

Mr. JOHNSON. Not a bit of it. The purpose is not to enable them to take advantage of the facilities which the Government has erected. I state that as an incident of the relationship which exists, in order that there may be a stronger case in behalf of the particular recipient of the loan; not upon the theory which the Senator suggests at all.

Mr. LEWIS. Mr. President, I will say to the able Senator from California that in behalf of my own constituency I have before the R.F.C. a proposition very similar to that suggested by the Senator; and I ask the Senator, upon what theory does he assume that the board as at present constituted can say that it has no power, even though the security be good, to grant relief to the institution to which he has referred, and a similar one that I am representing, in the face of the wording of section 201 (a) (1) of the act with regard to the power of the R.F.C. "to aid in financing projects authorized under Federal, State, or municipal law which are self-liquidating in character"? Why is not the enterprise of which he speaks one which has been organized under the State or city, and "self-liquidating in character"?

Mr. JOHNSON. Mr. President, if the Senator will permit me, the reason is because the R.F.C. says that it cannot loan under those circumstances. The logic of the contention I will not discuss with the Senator.

Mr. LEWIS. Despite this section?

Mr. JOHNSON. Yes. The logic I will not discuss. There might be 152 reasons why the loan ought to be made; but the group of men who determine the fact give one reason why it should not be made, and that is that they will not make it under the law; and that ends it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California [Mr. JOHNSON].

Mr. BONE obtained the floor.

Mr. GLASS. Mr. President, will the Senator yield?

Mr. BONE. I yield.

Mr. GLASS. First speaking to the question of procedure, I will say that I had no knowledge whatsoever of this proposed amendment. So far as I know, it has never been discussed in the general Banking and Currency Committee. It may have been discussed in some subcommittee thereof, but I do not recall that the matter has been reported to the general committee. Therefore, no discourtesy whatsoever was ever intended toward the Senator from California in not apprising him of the fact that the Barkley bill, which is purely supplemental to the so-called "Glass bill", was to be presented as an amendment to the Glass bill.

As a matter of fact, nothing whatsoever may be done under the provisions of the Barkley bill until first every effort to obtain credit is exhausted under the Glass bill. Therefore, the two bills having been unanimously reported from the Committee on Banking and Currency after full consideration, I very readily accepted the amendment proposed by the Senator from Kentucky to my bill.

In the second place, it always genuinely distresses me to have to appear in opposition to anything which the Senator from California proposes. I imagine, however, the Senator has learned, as other colleagues of mine have learned, that I am fundamentally opposed to the Government of the United States constituting itself a central bank to be loaning money to every sort of enterprise which may be conceived of.

I was opposed to the Reconstruction Finance Corporation bill, and warned the Senate that I was only going along with it because I did not care to be classified among those who were unwilling to cooperate with the then President of the United States in rescuing us from the emergency; but it is a well-known fact that the Reconstruction Finance Corporation was intended to be, and was at every stage of the procedure represented to be, purely an emergency organization. This is not an emergency proposition. It does not involve the employment of anybody who is not now employed. It is a mere community loan to one of the greatest cities in this country which, in common with other cities, has the taxing power. If it wants to engage in facilities of this sort, it ought not to come to the Federal Treasury to borrow money; it ought to tax its own people.

I advert to the objection raised by the Senator from Kentucky. I think the bill constitutes a privileged class, making Government loans only to people who have been fortunate enough to enter into a contract with the Government. I think the fact that they have been enabled to enter into a contract ought to give them complete satisfaction without wanting, in addition to that, to come here and take the taxpayers' money. I do not think government was instituted to tax all the people and take their money and loan it to special enterprises. I do not think that was ever the conception of government on the American Continent, and I do not think it ought to be.

The Reconstruction Finance Corporation was erected as an emergency measure, to give employment to people, to help get us out of the depression, and its loans were limited to a

period of 10 years. Now it is here proposed to permit them to make a peculiar sort of loan for a period of 20 years.

Mr. President, it is not particularly apposite, but I wish again to express the view that we have made mendicants of 48 States of this Union and of nearly every community in every State of the Union. We have practically by statute extended engraved invitations to people to rush here to Washington and to borrow money through the Federal Treasury—the taxpayers' money, for that is the only sort of money the Federal Treasury has or ought ever to have.

We do not even know, unless the distinguished Senator from California may assure us, whether the Reconstruction Finance Corporation wants this additional power. We have had no report from them; we do not know what that Corporation may say as to the soundness of the proposition.

I am perfectly willing to assure the Senator from California, so far as I am individually concerned, and I can assure him for the committee, that we shall be glad to take the bill up in committee and have the members of the board of directors of the Reconstruction Finance Corporation come before us and let us have their view of this matter, and to report the bill back, either favorably or adversely, so that the Senator may have ample opportunity to present it and have it passed, if the Senate wishes to pass it; but I very earnestly wish that the Senator would not offer the bill as an amendment to my pending bill.

We do not even know, we have had no intimation in the world, at least, I have not, that the proposition would meet with Executive approval. Suppose it should not, then the whole bill would go down, and many hundreds, if not thousands, of industries of this country now seeking aid through banking agencies and procedure would be denied these loans. Therefore, I very regretfully decline to accept the amendment presented by the Senator from California, and I hope the Senate may take that view.

Mr. BONE. Mr. President, I can only express regret that the Senator from Virginia [Mr. GLASS] entertains any objection to annexing Senate bill 3246 by Mr. JOHNSON, to the pending bill, although I can understand his attitude as a matter of parliamentary procedure, and I take it that he is opposed fundamentally to the purpose that underlies this bill. I cannot, however, quite bring myself to agree with him that the United States Government has made mendicants of 48 States.

Mr. GLASS. Mr. President, there may be one or two exceptions, but I do not remember them.

Mr. BONE. My reason for saying that is that the people of the States were made mendicants long before the United States Government, through its Congress, tendered any financial relief to them. They were the victims of conditions over which they had no control. They turned to the only agency they knew and to which they could turn, with any assurance of getting relief, and that agency was the Government.

I am as painfully aware of the implications of this type of legislation as is the Senator from Virginia; I think I understand his philosophy and his attitude toward proposals such as this; but in a great crisis such as confronted the people of this country they were made to realize nationally that economic necessity knows no law except the law of self-preservation.

Mr. GLASS. Mr. President, may I ask the Senator wherein consists any crisis? As the Senator from California presented his views on this bill, what is the crisis?

Mr. BONE. I had not intended to expand my remarks and make a speech about the financial crisis that attracts the attention of everyone. This bill is, however, a part and parcel of the whole program of reconstruction. We are not beginning this program; we are in the midst of it. If I may briefly refer to the policy of the Government as adopted in recent years, I want to try to show, if I can, why it is now necessary to have this sort of legislation, because of the fact that the Government has deliberately adopted certain policies with respect to the creation of great hydroelectric developments in this country.

Mr. BARKLEY. Mr. President, will the Senator yield there?

The PRESIDING OFFICER (Mr. MCGILL in the chair). Does the Senator from Washington yield to the Senator from Kentucky?

Mr. BONE. Yes.

Mr. BARKLEY. In that connection it ought to be said they were not necessarily emergency propositions; they were not brought forward to meet a particular emergency. It might be said that the Muscle Shoals law was hastened by conditions and probably some consideration was given to the question of unemployment in its passage at the last session of Congress, but many of us had been seeking that legislation for years, ever since the war, and we were seeking it even in the most prosperous times of 1928 and 1929. The Boulder Dam was not constructed as an emergency measure, but as a permanent improvement.

I wish to say that I do not know whether I would be against this proposal or not if the committee and the interested Government agencies were permitted to confer about it. I might be for the Senator's bill; I certainly am sympathetic to almost anything he proposes; but to add an amendment here under the guise of an emergency because of a permanent improvement that Congress provided for long before the depression, or certainly not because of the depression, is to me a little bit unfair to the Senate. We do not know whether we are going up a blind alley in this instance.

I join with the Senator from Virginia, so far as I am concerned, in giving assurance that we will be glad to consider this subject independently. I do not think the committee is guilty of any negligence in not having considered it heretofore. The committee has been overworked for many weeks and months, but we do now begin to see a little daylight, and I wish that we might consider this question independently. It might be that after the Board of Directors of the Reconstruction Finance Corporation and other Government agencies came down and conferred about it there might not be any opposition, but none of us now knows anything about just what we are doing here.

Mr. BONE. Mr. President, in view of the statement of the able Senator from California [Mr. JOHNSON] with reference to the attitude of the Reconstruction Finance Corporation toward the statute which was enacted by the Congress conferring upon it certain powers and, I think along with them, duties, I want to read the law under which that agency of the Government operates in the field we are now discussing. It is section 201 (a) and reads:

> The Reconstruction Finance Corporation is authorized and empowered—
>
> (1) to make loans to, or contracts with, States, municipalities, and political subdivisions of States, public agencies of States, of municipalities, and of political subdivisions of States, public corporations, boards and commissions, and public municipal instrumentalities of one or more States, to aid in financing projects authorized under Federal, State, or municipal law which are self-liquidating in character, such loans or contracts to be made through the purchase of their securities, or otherwise, and for such purpose the Reconstruction Finance Corporation is authorized to bid for such securities: *Provided*, That nothing herein contained shall be construed to prohibit the Reconstruction Finance Corporation, in carrying out the provisions of this paragraph, from purchasing securities having a maturity of more than 10 years.

That might mean from 10 years to infinity. Frankly I am at a loss to understand upon what sort of legal authority or advice the Reconstruction Finance Corporation acts when it says that a loan of the character authorized by the amendment of the Senator from California may not be made, and refuses to make loans to municipalities of the character described in his amendment. The statute I have read seems to clearly authorize such loans.

Sometimes when I see that sort of an attitude taken, and a set of regulations issued based on what seems to be a misconception of the plain provisions of the law, I am reminded of Bassanio, in the Merchant of Venice, where he said:

> His reasons are as two grains of wheat hid in 2 bushels of chaff. You shall seek all day ere you find them, and when you have them they are not worth the search.

I am reminded of that rather pungent statement of Shakespeare's character when I see the effect of the legal

advice given to some of the departments by lawyers connected with them.

Getting down to the fundamental thing that underlies this matter, I would not presume to rise and write into the RECORD what I am about to say unless I had in mind a picture of what the future is going to offer concerning the legislation that has been passed by this body and the body at the other end of the Capitol. By authority of acts of Congress the United States Government is now beginning to build a great power plant in the State of Washington, a tremendous enterprise. On the Columbia River, farther down toward the city of Portland, another great publicly owned plant is under construction, known as the "Bonneville plant." A plant capable of developing over 600,000 horsepower of electric energy is to be developed there. These plants may ultimately develop in the neighborhood of 2,000,000 horsepower when fully completed. There is to be a market developed for that power somehow somewhere. Is that market to be a public market or a private market? I presume to say what I am saying now because I want to write my own convictions into cold type before that thing happens which I fear may happen unless proper steps are taken.

The United States Government is either going to sell that power through publicly owned agencies or it is going to be compelled to distribute it through privately owned agencies. Let me say to the Senator from California [Mr. JOHNSON] that if there is a repetition of the Muscle Shoals fiasco, a thing which I think reflected discredit on the country—the sale of huge blocks of power to the Alabama Power Co. and its affiliates for as low as 2 mills per kilowatt-hour, afterward redistributed and supplied to customers at rates as high as 12, 14, and 16 cents per kilowatt-hour, 50 or 60 or 70 times what the company paid the United States Government for the power—if there be in my section of the country a repetition of that scandal, then every man in Congress from that section of the United States will have to tell the people sometime why he did not protest against private exploitation of his Government.

How is the Government going to handle that problem? It must be in just one of two ways, either through publicly owned distribution systems or through private power systems. If we build these great plants out there only to distribute the current through privately owned power companies, then we have made more laws here that will serve only to enrich private power companies. There is not a man in the Senate who can prove otherwise. I say to all the Members of this body that if we put more handcuffs on the wrists of the Government, then there will follow the only remaining method of distributing the power, which is through private agencies. In such case the profit, instead of being reflected in cheap rates and cheap power for the people, will be reflected in dividends and enormous salaries to the people operating and owning private power systems.

The purpose of the bill of the Senator from California [Mr. JOHNSON] is to enable cities and other public agencies to borrow the money to enable them to take over certain distribution systems now privately owned. There was a complaint registered in the State of New York recently in a power controversy that raged there, in which it was asserted that the bill presented and offered did not require a municipality, when it went into the power business, to acquire the existing privately owned systems. That was one of the arguments made against the bill. There is nothing in the pending amendment that raises that question. There is a calm invitation here in the legislation itself for the city to acquire the existing facilities and to pay for them.

I say to my friends in this body if there is any type of business on earth that is self-liquidating it is the electric-power business. I know. I have seen my own city indulge in that business for 40 years. I saw it build a fine hydroelectric plant which cost $2,000,000, and in 12 years, out of the earnings of that plant, in addition to giving us the cheapest light and power in the country, pay off and retire every dollar of the bonded debt representing the cost of the plant. I saw a thing as remarkable in the world of finance as was the financial wizardry of Aladdin's lamp. And yet that venture rested on the solid rock of financial soundness in every particular.

Today my city will give to the householder in that city for $4 an amount of electric energy for which the Westchester Electric Co., in the State of New York, privately owned, charges $20, or five times as much. My city has made as much as almost a million dollars net profit in 1 year on that beautiful publicly owned system, giving its people at the same time the cheapest light and power in this country and paying the prevailing standard of union wages.

Mr. GLASS. Mr. President, if the Senator will permit me——

Mr. BONE. Certainly.

Mr. GLASS. That is what every community ought to do which wants to build an electric plant. It ought to tax its own people and not the people of some other State.

Mr. BONE. I agree with the Senator, but I think he perhaps misunderstands the purpose behind this amendment. It is not proposed to tax anyone. The building of the Tacoma plant, which is a publicly owned power development, did not make it necessary to tax the people. This plant retired its bonded or funded debt from earnings. In the pending amendment, it is proposed that public bodies be permitted to borrow money from the Government and to pay that money back; not to make the taxpayers of the United States pay the bill.

But unfortunately some of the legislation which has passed the Congress of the United States has not provided for loaning money but has given it away to wealthy private corporations; millions and millions; aye, billions of dollars. We enacted laws under which men came to Washington and bought billions of dollars' worth of Government property for as low as 1½ cents on the dollar.

I recall the so-called "sale" of fine steamships which cost $2,250,000, for $30,000. Who pays for that? The lash is laid on the back of every taxpayer in the country to pay the difference between the cost and the sale price, and that lash will continue for years to be laid on his back because we have enacted that kind of legislation.

We are not satisfied even with that. We wrote and enacted another law under which the company that bought that steamship for one seventieth of its cost could get $24,000 for carrying a letter across the ocean—one trip, one letter, $24,000—which almost paid for a beautiful Government steamer which cost the taxpayers $2,250,000. That cost is reflected in the Government's bonds now outstanding and which generations to come must pay.

But to return to the amendment before us. Mr. President, if there is any agency on earth that is a self-liquidating agency, it is the power business. I want to say to the Members of the Senate that there is no business on earth that hires so few men for the amount of money invested. One can walk into a great modern hydroelectric plant, as I have done time after time, where fifty, seventy-five thousand horsepower of energy is being unleashed and sent out over the wires, and what does he find? One or two or three men walking around the plant, dressed as well as any Member of the Senate. The plant is automatic. If anything goes wrong with it, the plant automatically shuts off. When the cause of the shut-down is corrected, the plant automatically goes on. Fifty—seventy-five thousand horsepower is controlled there by a tiny little device locked up in a little iron box. Such are the marvels of science.

From the States of the Northwest there come many Members of this body representing States that are tied in with these great power developments. The municipalities of those States want the cheap power that will be so generously produced at Bonneville and Grand Coulee and at other places. I have a list of many of the public generating plants out in the West shown on a map prepared by Mr. Scattergood, chief engineer of the Los Angeles Light & Power System, showing the great proposed electrical intertie along the Pacific coast that will turn out millions and millions of horsepower of electric energy. The time is

coming when these Western cities will want to buy their distributing systems, and there is no reason why they should not be permitted to come to the Government and borrow the money to acquire these systems. The loans are certainly legitimate and safe. I quite thoroughly agree with the Senator from California that the bond market is such that it is almost an impossibility at present for a city to borrow money; and Senate bill 3246, introduced by the Senator from California [Mr. JOHNSON], permits the Reconstruction Finance Corporation to make loans to cities that desire to acquire their own distribution systems in cases where they intend to purchase power from Government power plants. If it is wrong for a city to distribute power, it is wrong for the United States Government to manufacture power. The Government should make it possible for Western cities to utilize its own product. That is the purpose of this amendment.

The time we are to be here is passing rapidly, and I know that some relief should be given. I want every city in the Northwest to have the right to enjoy the same privileges we now accord private corporations.

It is almost like loaning money to the United States Government to loan it to a city to acquire its own power system. No better or safer security exists in our economic system. Private companies have moved heaven and earth to prevent cities from going into the power business. They have not hesitated to debauch institutions of learning and to come down here and even use the Smithsonian Institution as a foil for the celebrated Wyer attack on Ontario. They have not hesitated to corrupt men in public life all over the country in their efforts to throttle public ownership. That is one field where we need have no fear about the financial solvency of a plant. Public ownership of power is profitable.

We shall have to meet this question, and I do not want the time to come when the people of my State can point to a great governmental agency that is turning the power produced by the Government into power lines to be distributed and sold by private power companies for private profit. If that time comes we shall confront a thing that in itself is a disgrace—the money of the people of the United States being used to build a great social instrumentality only to enrich the Power Trust, and not to bring cheap electric energy into the homes of the people.

God forbid that that time shall come! I want to write my protest into the CONGRESSIONAL RECORD, and I intend to write it later if there is any effort out in my part of the country to pervert the functions of those great plants so that they shall be instruments to enrich private power companies.

We have too long utilized governmental agencies to enrich private concerns, instead of making these agencies serve the people.

I know that I can make no such contribution, nor even a fragment of the great contribution, made by the Senator from Nebraska [Mr. NORRIS] in his battles in the power fields; but out in my part of the country the Government is now going into the power business on a greater scale than even in this great thing which was the dream and the vision of the Senator from Nebraska, the Muscle Shoals plant. I do not want to see the great electrical giants out there harnessed for the benefit of the Electric Bond & Share Corporation and the Stone & Webster power monopoly of Boston; and I may add that I do not intend to see it so long as I can register an effective protest in this body. I trust we shall adopt the amendment of the Senator from California. I want to see it written into law, because the Government ought to give aid, as far as it can with no loss to itself, to cities so that they may take advantage of these great agencies that we are now building with public money.

Mr. ROBINSON of Arkansas. Mr. President, when I moved the consideration of this bill, I had not understood that the question of loans for the Reconstruction Finance Corporation was to be raised. It was my understanding then that the bill of the Senator from Virginia [Mr. GLASS] would be disposed of probably in 5 or 10 minutes. The discussion has been prolonged, however, and the statement is made that it will be continued.

For this reason, and for the further reason that there is scarcely a quorum of Senators present, and it would be difficult to obtain a quorum, I shall presently move that the Senate proceed to the consideration of executive business, and that it then take a recess until Monday.

Mr. COPELAND. Mr. President, on behalf of the junior Senator from Michigan [Mr. VANDENBERG] and myself, I offer an amendment to the pending measure, the Glass bill. This amendment is to be an additional section. I ask that the amendment be printed in the RECORD and lie on the table, so that it may be brought up on Monday.

Mr. VANDENBERG. Mr. President, I wish the Senator from New York would indicate, so that there will be no misunderstanding about the matter and everyone will be on notice, that the amendment he has offered is the amendment which has been offered in the House with respect to broadening the powers of the Federal Deposit Insurance Corporation for the purpose of the further liquidation of bank deposits and the relief of bank depositors.

Mr. COPELAND. The Senator is correct.

The PRESIDING OFFICER. Without objection, the amendment will lie on the table and be printed, and also will be printed in the RECORD.

Mr. COPELAND's amendment is to add to the pending bill as an additional section the following:

That section 12B of the Federal Reserve Act is amended—

(1) by striking out the word "three" in subsection (o) and inserting in lieu thereof the word "five";

(2) by adding after subsection (y) a new subsection to read as follows:

"(z) The Federal Deposit Insurance Corporation is hereby authorized and directed to purchase, or to make a loan on, the assets of any bank, savings bank, or trust company or any part of such assets, upon such terms and conditions as the Corporation may, by regulations, prescribe. The Corporation is further authorized and directed, in case the Reconstruction Finance Corporation has made a loan to any such closed bank, to negotiate with the liquidating agent or receiver of such bank for an appraisal of its assets and the purchase thereof or the making of a loan thereon to take up the loan or any part thereof made by the Reconstruction Finance Corporation, if the Federal Deposit Insurance Corporation deems it desirable in the public interest and the loan will be reasonably secured. In making any purchase of or loan on assets of any closed bank, the Corporation shall appraise such assets at such value as they would be appraised under normal business conditions and in anticipation of an orderly liquidation over a period of years, rather than on the basis of forced-selling values in a period of business depression. The Corporation is authorized and empowered to sell any assets acquired under this subsection and shall, with respect to such selling and to the liquidation of assets of closed banks, pursue and encourage a policy of extending the period of liquidation so as best to conserve the values of such assets and to prevent unreasonable sacrifice thereof."

RELIEF TO HOME OWNERS

Mr. FESS. Mr. President, I have received a communication on the subject of loan associations from Hon. Roy Fitzgerald, a former Representative in Congress from Ohio, with special reference to the situation in Ohio. As it is very illuminating, I am sure Senators will be interested in what the writer says. The letter is as follows:

APRIL 20, 1934.

Hon. SIMEON D. FESS,
United States Senate, Washington, D.C.

DEAR SENATOR: The alarming loss of mortgaged homes by thousands of Ohio people prompts me to direct your attention to the deplorable conditions of the Ohio building associations, and the barrier which tends to prevent in large measure the relief which the National Government is apparently anxious to give.

The building association as originally conceived and operated was the organization of a limited group of thrifty individuals contributing to a common fund to be loaned to its members for the construction or purchase of homes. Each member subscribed for such number of shares, usually $100 par, as he felt able and disposed to pay for at the rate of 25 cents per share per week and was entitled to borrow from the fund as it accumulated such amount as could be secured by first mortgage on real estate, not in excess of the total par value of the shares to which he had subscribed. The priority of members to borrow from the fund was determined by an auction and the one bidding the highest premium in addition to the rate of interest fixed by the mutual association got the loan. The membership was limited by the total shares of stock. The association was not permanent. It was intended to be and was self-liquidating. The management

was economical. Financial troubles were unknown except in the few instances of embezzling officers. Each member, borrower or other, continued to pay on his stock or subjected himself to fines and forfeiture. When the borrowing member had paid for his stock in full, his mortgage was released and his stock canceled. Dividends were paid from surplus earnings derived from interest, premiums, and fines, and when there were no more members to borrow, final liquidation commenced. During the course of the years from 1875, such associations served a great public need. There were few savings banks. People were enabled and encouraged to save, and hundreds of thousands came to own their homes, who never could have acquired them otherwise. So great was the contribution to good and stable citizenship that the associations became popular, and they were favored by legislation, State and national.

Then innovations were introduced. The original capital stock was permitted to be increased. Persons were permitted to pay in full for shares of stock. They had no desire, perhaps no need, of building or acquiring homes. "Paid-up" stock certificates were issued, almost invariably earning attractive dividends. Associations accumulated idle funds. These were permitted to be loaned on apartment houses, on office buildings, on churches, and on manufacturing buildings. "Straight loans" at a fixed rate of interest payable quarterly were permitted. Mutuality was impaired. The unpopular fines and premiums were abolished, and the process of making loans standardized in accordance with general commercial practice.

The idea of permanency known nationally as the "Dayton plan" was established. Rivalries among building associations for increase in size and opportunity for more than meager compensation for the officers and employees developed. Opportunities to make profitable loans beyond available funds were presented. Building associations sought money and were permitted not only to borrow money but receive money on deposit at rates of interest definitely fixed from nonshareholders. The amounts of deposits were not restricted to any proportion of the capital stock. Competition for money to loan at certain periods became intense. An association would attract money in large sums from another by offering higher rates of interest and by paying larger dividends than to those others seemed wise. At other periods, when money was plentiful, there was competition for loans. Borrowers shopped from one association to another for interest rates, but especially for increased amounts. Enterprising speculators were occasionally able to borrow the entire cost of the property and perhaps in a few instances more. Loans were made to corporations with no other assets. The unrestrained competition was demoralizing.

The conservative or better-managed associations were handicapped in the struggle. They strove to avoid deposit money. They resisted "straight loans." They tried to keep down unsafe dividend rates and unsafe interest rates on deposits. Large sums of money were transferred from them to their more aggressive rivals. When money was plentiful, the more ambitious associations were willing to loan more money to applicants on the security offered and on more desirable terms.

These aggressive building associations at Dayton, the great building association center of the United States, are now all in the hands of the State authorities for liquidation.

The others, which in the unrestrained struggle for existence, had been compromised to a greater or less extent have ceased for more than 3 years to function normally. No loans have been made. Depositors and stockholders have been unable to withdraw but pittances, though in the aggregate considerable, and the large depositors and stockholders protest against even this "bread line" distribution which helps thousands in distress. They believe that their ultimate security is thereby impaired. This relief is immediately denied when an association is taken over by the State superintendent of building associations.

Here is a clipping from a daily paper showing the market prices of the stock and deposits of the building associations in Dayton and vicinity which are not in State liquidation, as well as the others, marked with an "X."

Building and loan quotations, Friday, Apr. 20

Stock	Bid	Asked
American X	5	
Central	30	40
Dayton X	5	
Fidelity	44	47
Franklin X	8	
Gem City	59	62
Homestead	34	
Miami X	5	
Miamisburg B. & L.	43	
Montgomery		33
Mutual X	17	24
Permanent X	19	29
Security X	3	
Washington	30	
West Dayton	24	
West Side	33	37
CERTIFICATES OF DEPOSIT		
American X	36	
Arcanum	45	
Brookville X	28	
Central	65	
Dayton X	36	
Fidelity		75

Building and loan quotations, Friday, Apr. 20—Continued

Stock	Bid	Asked
CERTIFICATES OF DEPOSITS—continued		
Franklin X	38	
Homestead	65	
Miami X	37	
Montgomery	60	70
Mutual X		75
Permanent	53	
Security X	36	48
State		71
Washington		71
West Dayton	63	
West Side	60	65
West Milton	35	

The associations have been compelled to foreclose upon and buy in millions of dollars' worth of real estate. There are no other bidders. Thousands have lost their homes. The unfortunate mortgagors not only have lost their property, but their hopes for the future are blighted by judgments for deficiencies which hang over them.

People, faced with foreclosure, petition the association to accept deeds for the mortgaged properties. Unfortunates have compromised the deficiency judgments and others, besides their deeds, have paid what they could and even given their, for the present, worthless notes.

Some unproductive property because of accumulation of taxes and heavy assessments must be abandoned to the State by both mortgagor and mortgagee; for with no market nor prospective market, the building association can better take the total loss of its loan than pay the taxes and assessments, and continue to pay them for years in addition to the foreclosure expense. This does not help our insolvent county.

Directors have reduced their compensation and all expenses. They remain in session until late hours. They are compelled to exercise discretion and bear responsibilities from which large stockholders when asked to take places on the board shrink and refuse.

They and the officers and employees are cursed alike by two great masses of our citizens, those who are importuned to pay what they owe, and those who cannot withdraw the money for which they have desperate need, because the others do not pay.

The associations have acquired millions of dollars of real estate. The taxes, assessments, and repairs are burdensome. The income is meagre. New organizations have had to be made to meet the new conditions efficiently. Sales of this real estate have been possible for but small amounts of each and the depreciated securities of the associations. If such securities were not accepted in payment, there could be no sales. The State superintendent of building associations permits it. Several millions of dollars' worth have been sold with but small loss.

In this city of 200,000, where for a half a century the building associations have been universally used as savings banks, there is scarcely a soul not effected and exasperated by the conditions. Few understand and all are resentful.

Suddenly relief was offered by the Federal Government through the Home Owners' Loan Corporation. Building associations were offered bonds secured by real estate with interest guaranteed to maturity by the United States in exchange for "distressed" loans, loans with impaired security on property with delinquent taxes. The bonds today are selling above par. Of course, the amount of bonds offered was almost invariably only a fraction of the amount due on the loans, but if the bonds could be sold as real estate was permitted to be exchanged for the depreciated securities of the associations on the open market, the losses to the associations could be made good or reduced to a trifle.

The way to recovery in Dayton seemed assured. The plan was ideal. The distressed home owner, whose property was no longer worth the mortgage and taxes, was to have his taxes paid, his mortgage reduced, and his home restored with a real value to him above the reduced mortgage, and all without any expense to him nor loss to the building association and all through the benevolent intervention of Uncle Sam.

For example, a family before 1929 had bought their home, supposed to be worth $7,500, with the aid of a building-association loan of $5,000. Because of unemployment they still owe the $5,000. The property is no longer worth $7,500. They also owe delinquent taxes of $200 and delinquent interest of $200, a total owing of $5,400. The Federal Government, however, thinks the home worth $4,800 and will loan 80 percent of $4,800, or $3,840, on it in bonds, if the building association will allow the $200; taxes to first be paid and accept the rest of the bonds, $3,600 worth, in full of the amount, $5,200, due on its mortgage. As the $3,840 of bonds would buy more than $5,200 worth of the depreciated securities of the building association, the association is eager to get rid of the bad loan without loss and so cooperate with the Federal Government and help the family save the home.

One association in Dayton alone agreed to accept $981,307.37 in these H.O.L.C. bonds from the Federal Government and cancel mortgages on Dayton homes totaling $1,306,403.25, knowing that by exchanging the bonds for its own depreciated stock it would lose less than $500, and that out of interest which it never could have collected. It sold its foreclosed real estate for stock; it

would sell the bonds for stock. If it did not, it would sustain the tremendous loss of $325,095.88, and this was but the beginning. Such losses would mean ruin.

THE BARRIER TO RECOVERY

Even more sudden and disastrous than the flood of 1913, on February 10, came from the State superintendent of building associations rule III forbidding building associations throughout the State to purchase their depreciated securities with the proceeds of the Home Owners' bonds.

The State superintendent apparently followed a mistaken policy of emphasized tenderness toward large investors and actually against their best interests and a misconception of the law giving fancied priorities to those who had given early notice of a desire to withdraw their stock or other deposits. Such priorities have invariably been denied by the courts when the affairs of associations have come to them for administration.

Protests and arguments have been presented at Columbus. The attorney general of the State seems to view neither the policy nor legality of rule III with approval, but nothing apparently can shake the conviction of the State superintendent of building associations that the rule is lawful, wise, and desirable.

In the meantime Uncle Sam stands waiting on the border of Ohio with bags of money to pay into our insolvent county treasuries and to save the homes of our distressed. We may well ask, "How long will he stand there waiting?"

Very truly yours,

ROY FITZGERALD.

HOSTILITY TO THE JEWS IN GERMANY

Mr. KING. Mr. President, on the 23d of January, the Senator from Maryland [Mr. TYDINGS] offered a resolution (S.Res. 154), which was referred to the Committee on Foreign Relations. That committee has not acted upon the resolution. In my opinion it should have received consideration at its hands. The chairman of the committee is absent from the city for a few days, but upon his return I shall inquire of him what, if any, action will be taken by the committee on the resolution referred to. If no action is to be taken by the committee, I shall take the liberty of asking that the committee be discharged from further consideration of the resolution and that the resolution be laid before the Senate for action. The resolution in substance declares that the present government of the German Reich has deprived certain groups of its citizens of many of their civil and political rights and has imposed upon them restrictions, pains, and penalties, harsh and severe in nature.

It particularly refers to the discrimination against 600,000 Jewish citizens and a great number of Christians of partly or wholly Jewish descent. The resolution further declares that actual causes for the discriminations against the groups and persons referred to are their religious beliefs or professions, and their racial origin, and then adds that there are no grounds reasonably affecting their rights and privileges as citizens of a modern state. The resolution refers to occasions when there have been intercessions by our Government on behalf of the citizens of other countries who are oppressed or persecuted, and further states that for nearly 100 years the traditional policy of the United States has been to take cognizance of such invasions of human rights. The resolution asks that the Senate express its feelings of profound surprise and pain as representatives of the people of the United States upon learning of the discriminations and oppressions imposed by the Reich upon its minority groups including its Jewish citizens and expresses the earnest hope that this policy will be speedily changed so that the minority groups may have restored to them the civil and political rights of which they have been deprived.

Mr. President, since offering this resolution there has been no change in the attitude of the German Government toward its Jewish citizens as well as other German citizens who have not subordinated their religious and political views to the will of the governing regime of that country.

In the New York Times of this date appears an article dated May 11 in Berlin which indicates that there will be no abatement of the persecution to which the Jews have been subjected, but, upon the contrary, that they are to be the victims of further discriminations, persecutions, and oppressions. The article further states that Dr. Goebbels, who speaks for Hitler and for the German Government, "was almost as unsparing if not as contemptuous of Catholicism." Following this article and in the same issue of the Times is a wireless dispatch from Munich which further shows the hostile attitude of the German Government to the Jews.

Mr. President, I ask unanimous consent to have inserted in the RECORD the article to which I have referred.

There being no objection, the matter was ordered to be printed in the RECORD as follows:

GOEBBELS UTTERS THREATS TO JEWS—GERMANS WILL VENT RAGE IF THE BOYCOTT CONTINUES, HE SAYS IN "LAST WARNING" SPEECH—ASSAILS CATHOLICS ALSO—HIS NEWSPAPER ASKS READERS TO REPORT CASES OF JEWISH "SHAMELESSNESS" TO IT

BERLIN, May 11.—The heavy artillery in the new Nazi campaign against "killjoys", grumblers, and "critic bugs" was unlimbered by Dr. Paul Joseph Goebbels, the Minister of Propaganda, tonight with a speech in the Sportpalast, but it was not at all what was to be expected from advance notices of the campaign.

The new drive had been foreshadowed as a joyous drumfire, continuing for weeks with speeches, broadcasts, newspaper articles, and flying columns of minute men swooping down on cafes and restaurants in their hours of relaxation to exercise grousing and carping and preach the Nazi brand of optimism.

Dr. Goebbels did point out that if there were spots on national socialism, as there are on the sun, it was unbecoming to talk of them and that the ruling powers would not stand for carping criticism. But the burden of his address was an apology for national socialism's not having done better, especially with regard to wages, as promised in his "socialist plans", and a bitter attack on the Jews and the Catholics.

LAYS BOYCOTT TO GERMAN JEWS

He told his audience that all Germany was "aware of the fact that if part of the outside world continues the anonymous boycott against German goods, this is due to our own Jewish fellow citizens", and he warned that part of the outside world, and especially foreign Jews, that they were doing the worst service possible to the German Jews. He declared:

"If the boycott were carried to lengths, actually endangering our economic situation, it would not mean that we would let the Jews go free. No! The hatred, rage, and despair of the German people would first of all vent itself on those who can be grabbed in the homeland.

"If the Jews imagine that the bloodless course of the German revolution gives them right to disport themselves again in their habitual impudence and arrogance and provoke the German people, let them be warned not to tax our patience too severely.

"We have spared the Jews, but if they think they can therefore reappear on the stage and in the editorial office, if they imagine they can again stroll along the Kuerfurstendamm as if nothing at all had happened, let them take my words as a last warning."

This evoked tremendous applause from the audience.

German Jews must conduct themselves in Germany in a manner befitting "guests", Dr. Goebbels declared, and they had better place no hope on any move of their coreligionists abroad.

BARS EQUAL RIGHTS

"German Jews will be left alone by us if they will quietly and modestly retire within their four walls and if they will refrain from putting forth a claim to equal worth and equal rights with Germans", he said. "If they do not, they will have to blame themselves for the consequences."

Dr. Goebbels was almost as unsparing, if not as contemptuous, of Catholicism.

He charged that Catholic pulpits were being used as screens for "Centrist politics", and he admonished "militant churchmen" to have regard how their activities were viewed by the German people.

He thus paid his compliments to Cardinal Michael von Faulhaber of Munich:

"I never once could discover that the cardinal ever raised a protest (before the Nazi regime) against the demoralization of the German people through the theater and the film. Now, all at once, he finds his heart oppressed with concern for Christianity. This comes a bit late."

Toward the end of his speech Dr. Goebbels disavowed any intention of Nazifying France.

"We must prefer a democratic to a National Socialist France", he said, "for national socialism makes a nation stronger."

WATCH ON JEWS ASKED

Previous evidence that a second Nazi wave of active anti-Semitism was getting under way was furnished today by Der Angriff, the organ of Dr. Goebbels. It calls upon all its readers and all party members to report to it any examples of "Jewish shamelessness."

The text of the declaration is as follows:

"The brazen fashion in which many Jews have begun once again to behave themselves has attracted general attention in the last few months. Last year they got thoroughly frightened and became as still as mice. Now that they have discovered that the Germans are gentle people, they seem to think that they can indulge again their usual arrogant behavior.

"Numberless Jews have returned from abroad, many have found new positions and new contracts. They appear not only in business life but in society wholly undisguised, in the noisy and insolent fashion with which we are acquainted and which has played a considerable role in making them generally unpopular.

"We do not ask a pogrom, and we are not asking for persecution of the Jews, but we intend to show how the Jew is behaving once again and how he should behave. Our purpose is simply to give our tolerated and protected Jewish citizens lessons in proper manners.

We have already received a mass of material on this subject. We are constantly adding to it.

We expect every reader, party member, storm trooper, and worker to report to us every case of Jewish shamelessness in the last months and weeks, so that we can publish it in Der Angriff.

Let no one lay a hand on the Jews. But let every man watch them on the street, in the open, in cafes and restaurants, in their professions, and on voyages, every place where the Jew is to be found individually, but especially where they appear in crowds. You cannot possibly miss them.

And report to Der Angriff what is happening.

A warning of the same kind for Jews who might regard themselves as the equals of other citizens was contained in a recent address by Julius Streicher, the Nazi party leader in Nuremberg.

STUERMER PURSUES ATTACKS

MUNICH, May 11 (London Times dispatch).—Despite the indignation aroused by its special "ritual murder" number, the two issues of the Stuermer that have since appeared show no signs of any modification in the attitude of its editor, Julius Streicher.

Both numbers are as full of anti-Jewish hatred as their predecessors and contain the usual caricatures and epithets. Christ's denunciation of the scribes and Pharisees is interpreted as a "curse on the Jews", and commented on with the words:

"The defenders of Christ's murderers still live among us, yet there are people who are not ashamed to defend the Jews."

EXECUTIVE SESSION

Mr. ROBINSON of Arkansas. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. MCGILL in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations and a convention, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

Mr. MCKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters, which were ordered to be placed on the calendar.

Mr. ROBINSON of Arkansas. Mr. President, on behalf of the senior Senator from Tennessee [Mr. MCKELLAR], I report favorably from the Committee on Post Offices and Post Roads the nomination of Nannie L. Connevey to be postmaster at Bauxite, Ark., and the nomination of Frank B. Ortman to be postmaster at Cotter, Ark., and I ask unanimous consent for the present consideration of the nominations.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the nominations are confirmed.

If there be no further reports of committees, the calendar is in order.

COLLECTOR OF INTERNAL REVENUE

The legislative clerk read the nomination of Daniel D. Moore to be collector of internal revenue for the district of Louisiana.

Mr. ROBINSON of Arkansas. Let that go over.

The PRESIDING OFFICER. The nomination will be passed over.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. ROBINSON of Arkansas. I ask that the nominations of postmasters be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations of postmasters are confirmed en bloc.

IN THE ARMY

The legislative clerk proceeded to read sundry nominations for appointment and promotions in the Army.

Mr. SHEPPARD. I ask that the Army nominations be confirmed en bloc.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the nominations are confirmed en bloc.

Mr. SHEPPARD. I ask that the President be notified.

The PRESIDING OFFICER. Without objection, the President will be notified.

RECESS

Mr. ROBINSON of Arkansas. I move that the Senate take a recess until 11 o'clock a.m. on Monday next.

The motion was agreed to; and (at 2 o'clock and 40 minutes p.m.) the Senate took a recess until Monday, May 14, 1934, at 11 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate May 12 (legislative day of May 10), 1934

POSTMASTERS

MASSACHUSETTS

James F. McClusky to be postmaster at Middleboro, Mass., in place of W. R. Farrington, deceased.

Lawrence D. Quinlan to be postmaster at Northfield, Mass., in place of C. F. Slate. Incumbent's commission expired January 22, 1934.

John F. Malone to be postmaster at Southwick, Mass., in place of W. C. Hastings. Incumbent's commission expired January 22, 1934.

Arthur J. Fairgrieve to be postmaster at Tewksbury, Mass., in place of A. J. Fairgrieve. Incumbent's commission expired March 18, 1934.

NEBRASKA

Edith E. Fahrlander to be postmaster at Brule, Nebr., in place of G. C. Dearing, removed.

Kenneth R. Newcomb to be postmaster at Cambridge, Nebr., in place of D. B. Dick. Incumbent's commission expired April 16, 1934.

James B. Gordon to be postmaster at Cedar Rapids, Nebr., in place of W. A. Gibson, resigned.

Gladys J. Broun to be postmaster at Crookston, Nebr., in place of R. H. Gable. Incumbent's commission expired December 16, 1933.

Charles E. Furman to be postmaster at Danbury, Nebr., in place of W. J. Stilgebouer. Incumbent's commission expired January 28, 1934.

Edmund A. Hall to be postmaster at Fairmont, Nebr., in place of W. S. Brown, deceased.

Thomas A. Siefken to be postmaster at Harvard, Nebr., in place of G. W. Miller. Incumbent's commission expired March 8, 1934.

Philo J. Hewitt to be postmaster at Lexington, Nebr., in place of Frederick Nielsen. Incumbent's commission expired February 9, 1931.

Juna M. Daly to be postmaster at Lisco, Nebr., in place of G. W. Sampson. Incumbent's commission expired September 18, 1933.

LaVern A. Breeden to be postmaster at Minatare, Nebr., in place of G. H. Cary. Incumbent's commission expired November 6, 1933.

George C. Thurman to be postmaster at Peru, Nebr., in place of H. W. Bedell, deceased.

William M. Goding to be postmaster at Potter, Nebr., in place of E. H. Bartlett. Incumbent's commission expired February 18, 1933.

Edward Emerine to be postmaster at Scottsbluff, Nebr., in place of August Dormann. Incumbent's commission expired January 28, 1934.

Beth Clary to be postmaster at Seneca, Nebr., in place of E. T. Lay. Incumbent's commission expired January 5, 1933.

George A. Hallock to be postmaster at Springview, Nebr., in place of Roscoe Buck, removed.

Frederika W. Weber to be postmaster at Wahoo, Nebr., in place of J. B. Hines. Incumbent's commission expired January 28, 1934.

Orley E. McCallum to be postmaster at Waumeta, Nebr., in place of J. W. Hann. Incumbent's commission expired September 18, 1933.

NEW YORK

Mae Nolan to be postmaster at Clark Mills, N.Y., in place of B. W. Cornwell. Incumbent's commission expired February 28, 1933.

Fred S. Tripp to be postmaster at Guilford, N.Y., in place of F. S. Tripp. Incumbent's commission expires May 29, 1934.

Olivia L. McGowan to be postmaster at Roosevelt, N.Y., in place of Frederick Harrigan, resigned.

Claude A. Bierman to be postmaster at St. Johnsville, N.Y., in place of Chris Fox. Incumbent's commission expired December 20, 1932.

NORTH CAROLINA

James J. Parker to be postmaster at Murfreesboro, N.C., in place of Cephus Futrell. Incumbent's commission expired February 25, 1933.

PENNSYLVANIA

James J. Law to be postmaster at Wilkes-Barre, Pa., in place of H. W. Merritt, removed.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 12 (legislative day of May 10), 1934

APPOINTMENT BY TRANSFER IN THE REGULAR ARMY

First Lt. John Douglas Salmon to Field Artillery.

PROMOTIONS IN THE REGULAR ARMY

Albert Bowdre Dockery to be colonel, Cavalry.

William Henry Cowles to be colonel, Cavalry.

Frederick Arthur Mountford to be lieutenant colonel, Coast Artillery Corps.

Horace Hayes Fuller to be lieutenant colonel, Field Artillery.

Henry Fred Grimm, Jr., to be major, Coast Artillery Corps.

Richard Terrell Guthrie to be major, Field Artillery.

Henry Linsert to be major, Chemical Warfare Service.

John Thomas Dollard to be captain, Quartermaster Corps.

Norman Delroy Brophy to be captain, Air Corps.

Raymond Morrison to be captain, Air Corps.

Charles Grant Goodrich to be first lieutenant, Air Corps.

Elmo Stewart Mathews to be first lieutenant, Signal Corps.

Paul Amos Gavan to be first lieutenant, Field Artillery.

Joseph Oscar Ensrud to be chaplain with the rank of captain, United States Army.

John William Westerman to be chaplain with the rank of captain, United States Army.

Andrew Thomas Francis Nowak to be chaplain with the rank of captain, United States Army.

POSTMASTERS

ALABAMA

Robert G. Davis, Gordo.
Effie Mann, Nauvoo.
Annie M. Stevenson, Notasulga.

ARKANSAS

Nannie L. Connevey, Bauxite.
Frank B. Ortman, Cotter.

COLORADO

John W. Anson, Silt.
Heman H. Davis, Springfield.
George S. Niebuhr, Walsenburg.

GEORGIA

Roy R. Powell, Arlington.
John Day Watterson, Eatonton.

ILLINOIS

John J. McGuire, El Paso.
Clyde E. Wilson, Melvin.
Charles C. Wheeler, Sandwich.
Mary I. Quinn, Wilmington.
Croy Howard, Xenia.

IOWA

Lulu M. Davis, Waukee.

KENTUCKY

Thomas E. Cooper, Beaver Dam.
John A. Van Pelt, Kenvir.

MINNESOTA

Joseph A. Heimer, Adams.
Benjamin M. Loeffler, Albert Lea.
Bert C. Hazle, Alden.
William L. Ward, Anoka.
Charles B. Fraser, Battle Lake.
Henry P. Dunn, Brainerd.
Denis J. McMahon, Breckenridge.
Patrick V. Ryan, Caledonia.
Alexander Kolhei, Cottonwood.
Glen J. Merritt, Duluth.
Norman M. Brown, Ely.
Gilbert P. Finnegan, Eveleth.
Mark R. Gorman, Fairmont.
Bernard A. Gorman, Goodhue.
James F. Fahey, Graceville.
Allen J. Doran, Grand Rapids.
Dean M. Alderman, Grey Eagle.
Dagny G. Sundahl, Grove City.
Earl Stanton, Hayfield.
Lee L. Champlin, Mankato.
Alfred W. Quinn, Markville.
William C. Robertson, Minneapolis.
Carl C. Heibel, Northfield.
Simon M. North, Olivia.
Patrick J. Hartigan, Paynesville.
Charles D. Dempsey, St. Peter.
Andrew Reid, South St. Paul.
Walter J. Mueller, Springfield.
Teresa L. Wolf, Staples.
Andrew Anderson, Thief River Falls.
Dennis Dwan, Two Harbors.
Ewald G. Krueger, Vergas.
Alfred Henderson, Vernon Center.
Oscar W. Hennings, Wanamingo.
William F. Sanger, Windom.
Sarah E. Jones, Zimmerman.

NEBRASKA

James C. Nelson, Mason City.

NEVADA

Ralph H. Burdick, Tonopah.

NEW MEXICO

Jesse L. Truett, Artesia.
Ray S. Soladay, Carlsbad.
Arthur L. England, Clayton.
Rosalie Littlefield, Elida.
Arthur L. Langford, Hobbs.
Aurora B. Pacheco, Old Albuquerque.
Mary McCullough, Roswell.
Jose Z. Sanchez, Santa Rosa.

NEW YORK

Charles Kaiser, Armonk.
Mayhew D. Tower, East Moriches.
George W. Sheahan, Elmira.
Benjamin S. Helmer, Mohonk Lake.
Denis W. Keating, Olean.
Roy Blanchard, Oneida.
Francis P. Reilly, Penn Yan.

OHIO

Clyde M. Bartlow, Felicity.
Walter T. Ault, Findlay.
Burch Trent, Leesburg.
Susan M. Ramsey, Loveland.
Alex F. Wannemacher, Ottoville.

PENNSYLVANIA

Harry W. McArthur, Conneaut Lake Park.
Charles H. Rettew, Honesdale.

James W. Hatch, North Girard.
George G. Foley, Pocono Manor.

VERMONT

Ernest A. Naylor, Alburg.
Cecelia S. Joslyn, South Hero.
James G. Boutelle, Townshend.
Ruth A. Randall, Wells River.
Timothy J. Murphy, Windsor.

WASHINGTON

George D. Magee, Aberdeen.
Vaughan Brown, Bellingham.
Jeane R. French, Skamokawa.

SENATE

MONDAY, MAY 14, 1934

(Legislative day of Thursday, May 10, 1934)

The Senate met at 11 o'clock a.m., on the expiration of the recess.

THE JOURNAL

On motion of Mr. ROBINSON of Arkansas, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Saturday, May 12, was dispensed with, and the Journal was approved.

CALL OF THE ROLL

Mr. ROBINSON of Arkansas. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Copeland	Hayden	Overton
Ashurst	Costigan	Hebert	Patterson
Austin	Couzens	Johnson	Pope
Bachman	Cutting	Kean	Reynolds
Bailey	Davis	Keyes	Robinson, Ark.
Bankhead	Dickinson	King	Schall
Barbour	Dill	La Follette	Shipstead
Barkley	Duffy	Lewis	Steiwer
Black	Erickson	Logan	Stephens
Bone	Fess	Lonergan	Thomas, Okla.
Borah	Fletcher	McCarran	Thomas, Utah
Bulkley	Frazier	McGill	Thompson
Bulow	George	McKellar	Townsend
Byrd	Gibson	McNary	Tydings
Byrnes	Glass	Metcalf	Vandenberg
Capper	Goldsborough	Murphy	Van Nuys
Carey	Hale	Norbeck	Walcott
Clark	Harrison	Norris	Walsh
Connally	Hatch	Nye	Wheeler
Coolidge	Hatfield	O'Mahoney	White

Mr. LEWIS. Mr. President, I rise to announce the absence of the Senator from New Hampshire [Mr. BROWN], the Senator from Arkansas [Mrs. CARAWAY], the Senator from New York [Mr. WAGNER], the junior Senator from Illinois [Mr. DIETERICH], the Senator from Oklahoma [Mr. GORE], the Senator from Louisiana [Mr. LONG], the Senator from West Virginia [Mr. NEELY], the Senator from Nevada [Mr. PITTMAN], the Senator from Georgia [Mr. RUSSELL], the Senator from Texas [Mr. SHEPPARD], the Senator from Florida [Mr. TRAMMELL], and the Senator from South Carolina [Mr. SMITH], who are necessarily detained on official business, while the Senator from California [Mr. MCADOO] continues ill. I ask that this announcement may stand for the day.

Mr. HEBERT. I wish to announce that the Senator from Pennsylvania [Mr. REED] is necessarily detained from the Senate.

The VICE PRESIDENT. Eighty Senators have answered to their names. A quorum is present.

PETITIONS AND MEMORIALS

Mr. TYDINGS presented a petition of sundry citizens of Baltimore, Md., praying for the passage of the bill (S. 3171) to amend the Interstate Commerce Act, as amended, by providing for the regulation of the transportation of passengers and property by motor carriers operating in interstate or foreign commerce, and for other purposes, which was referred to the Committee on Interstate Commerce.

Mr. COPELAND presented a resolution adopted by the board of trustees of the village of Manorhaven, Nassau County, N.Y., favoring the granting by the Public Works Administration of a loan in the sum of $750,000 for harbor improvement at Manorhaven, N.Y., which was referred to the Committee on Finance.

Mr. WALCOTT presented petitions and papers in the nature of petitions from the Children of Mary Society, the Holy Name Society, the Rosary Society, and sundry members of the parish of St. John the Baptist, of New Haven; Orinoco Council, No. 39, of Greenwich, Ojeda Council, No. 33, of Naugatuck, and St. Augustine Council, No. 41, of Stamford, all of the Knights of Columbus; Court Seville, No. 24, Catholic Daughters of America, and the Children of Mary Sodality of the Church of the Assumption, both of Ansonia, and the Hungarian-American Democratic Club of Norwalk, all in the State of Connecticut, praying the amendment of proposed radio legislation so as to provide adequate broadcasting facilities for religious, educational, and agricultural subjects, which were referred to the Committee on Interstate Commerce.

He also presented the memorial of Martha Washington Council, No. 16, Sons and Daughters of Liberty, of New London, Conn., remonstrating against the enactment of legislation loosening immigration restrictions, which was referred to the Committee on Immigration.

He also presented a resolution adopted by the Women's Home Missionary Society of the First Methodist Episcopal Church, of Hartford, Conn., favoring the prompt passage of House bill 6097, providing higher moral standards for films entering interstate and foreign commerce, which was referred to the Committee on Interstate Commerce.

REPORTS OF COMMITTEES

Mr. BARBOUR, from the Committee on Military Affairs, to which was referred the bill (S. 1146) for the relief of John W. Beck, reported it with an amendment and submitted a report (No. 1001) thereon.

Mr. COOLIDGE, from the Committee on Military Affairs, to which was referred the bill (S. 1177) for the relief of Edward T. Costello, reported it without amendment and submitted a report (No. 1002) thereon.

He also, from the same committee, to which was referred the bill (S. 418) for the relief of William H. Connors, reported it with amendments and submitted a report (No. 1003) thereon.

Mr. CAREY, from the Committee on Military Affairs, to which was referred the bill (S. 2454) for the relief of Arthur W. Adams, reported it with an amendment and submitted a report (No. 1009) thereon.

Mr. KING, from the Committee on the Judiciary, to which was referred the bill (S. 3319) to amend section 233 of the Criminal Code, as amended, reported it without amendment and submitted a report (No. 1004) thereon.

He also, from the same committee, to which was referred the bill (S. 588) to amend the Judicial Code by adding a new section to be numbered 274D, reported it with amendments and submitted a report (No. 1005) thereon.

Mr. LOGAN, from the Committee on the Judiciary, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 339. An act for the refundment of certain countervailing customs duties collected upon logs imported from British Columbia (Rept. No. 1006); and

H.R. 7353. An act granting the consent of Congress to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime, and for other purposes (Rept. No. 1007).

Mr. LOGAN also, from the Committee on the Judiciary, to which was referred the bill (H.R. 9370) to authorize an appropriation of money to facilitate the apprehension of certain persons charged with crime, reported it with amendments and submitted a report (No. 1008) thereon.

Mr. STEIWER, from the Committee on Indian Affairs, to which was referred the bill (S. 3291) providing for a